FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2009

WEDNESDAY, MARCH 12, 2008

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 4:02 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Richard J. Durbin (chairman) presiding.

Present: Senator Durbin.

THE JUDICIARY

STATEMENT OF HON. JULIA S. GIBBONS, JUDGE, U.S. COURT OF APPEALS, SIXTH CIRCUIT; CHAIR, BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE

OPENING STATEMENT OF SENATOR RICHARD J. DURBIN

Senator DURBIN. Good afternoon. This is the second of the subcommittee's hearings, and today we are going to focus on the fiscal year 2009 budget for the Federal judiciary.

We will be hearing from two distinguished witnesses: Judge Julia Gibbons—welcome—and Director James Duff. Welcome as well. I am pleased that you are here speaking on behalf of our Federal judiciary.

I welcome my colleagues who will come as the meeting progresses.

In fiscal year 2008, despite the difficulty the subcommittee faced in attempting to adequately fund all the various agencies within our jurisdiction and remain within the President's overall spending level, we managed to provide the judiciary with a 4.5 percent increase overall. With the prior 3 fiscal year increases of 5 percent, all this has helped put the courts back on track after suffering significant cuts in fiscal year 2004.

With fiscal year 2008 funds, hirings for probation and pretrial services are increasing back to previous levels; non-capital panel attorney rates were increased from $94 an hour to $100, a modest increase; courts were provided additional funding to absorb the additional caseload expected with increased border enforcement; court security requirements were fully funded; and authority was clarified that the U.S. Marshals may assume responsibility from the Federal Protective Service (FPS) for perimeter security at several designated courthouses.

For fiscal year 2009, you are requesting a 7.6 percent increase overall for the judiciary above last year's levels. In addition, within the defender services account, you are requesting an increase in the non-capital panel attorney rate, which would boost hourly rates from $100 to $118 and then to $140 in fiscal year 2010. The subcommittee provided a 7.6 percent increase for defender services last year, and such large pay increases for these attorneys this year will likely be optimistic, given our anticipated funding constraints. It is why I hope that we will be able to at least provide a modest increase in the non-capital panel attorney rate.

Regarding court security, I look forward to being updated on the progress of the pilot program undertaken with the U.S. Marshals Service at designated courthouses. I will also be interested to learn how the judiciary is implementing the Court Security Improvement Act. And I will want to discuss with you the Justice Department's inspector general's report on the U.S. Marshals Service.

I will have questions about courthouse construction, the impact of increased border enforcement, your workload, offender reentry programs, General Services Administration (GSA) rent, and more. If we cannot cover all the questions in the hearing, we will send them to you for the record, and I am sure that you can get them back to us in a reasonable period of time.

Senator Brownback will be unable to attend today's hearing, but has asked that his statement be submitted for the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR SAM BROWNBACK

Good afternoon. I want to thank you, Chairman Durbin, for your leadership. I look forward to working together with you during this coming year as we make funding decisions and provide oversight for the Federal Judiciary as well as the other agencies within this subcommittee's jurisdiction.

I would like to thank Judge Gibbons and Mr. Duff for appearing before our subcommittee today. I look forward to hearing the details of your fiscal year 2009 budget request and the key efforts that the Judiciary will be undertaking this year. The Judiciary has the critical role of interpreting our laws and I am interested in hearing your thoughts on the state of our Nation's courts.

Looking at the budget submission, I am pleased to see an increase in defender services which is extremely important in light of last night's Senate passage of the Second Chance Act. This bill reshapes the way we look at prisoner re-entry. It is comprised of grant programs targeted at States, local governments and non-profit, faith-based organizations. And unlike most grant programs, in order to receive future funding under this act, programs must show real progress in reducing the recidivism rate of the program participants. As you all know, the U.S. Sentencing Commission recently passed the Crack Cocaine Sentencing Amendment, and it took effect in November. This sentence reduction for crack cocaine offences is retroactively applicable, thus allowing thousands of Federal offenders to seek reductions in their sentences. I would hope that with the passage of the Second Chance Act that we will be able to get much-needed re-entry programs to the inmates who truly need these essential services.

I would like to mention my concerns about the overall slowdown in Federal judge confirmations. There are currently 45 vacancies—14 circuit court vacancies and 31 district court vacancies with 27 nominees awaiting confirmation. I understand the hardship this places on the Judiciary. There is bit of progress being made, however, because yesterday the Judiciary Committee reported out several district court judges for confirmation on the Senate floor and tomorrow a circuit court judge is on the agenda for the Judiciary Committee markup. I am hopeful that we will continue to make progress in confirming judges and reducing the strain on the Judiciary.

Judge Gibbons and Mr. Duff, I look forward to hearing your testimony this afternoon.

Thank you, Mr. Chairman.

Senator DURBIN. I also note that the subcommittee is in receipt of written testimony submitted by the Court of Appeals for the Federal Circuit, the Court of International Trade, Federal Judicial Center, and the U.S. Sentencing Commission, all of which will be submitted for the hearing record.

Judge Gibbons, I am going to allow you to begin. I thank you for being here today and look forward to putting your remarks in the record. Judge Gibbons.

JUDGE GIBBONS' OPENING STATEMENT

Judge GIBBONS. Thank you for the opportunity to be here.

Chairman Durbin, I appear as Chair of the Judicial Conference Committee on the Budget, and with me today, of course, is Jim Duff, who is the Director of the Administrative Office of the United States Courts.

We thank you, Mr. Chairman, for attending the Judicial Conference session yesterday and for your remarks there.

FISCAL YEAR 2008 FUNDING

Let me begin by thanking the subcommittee for making the judiciary a funding priority in the fiscal year 2008 appropriations cycle. The courts are in good financial shape for 2008. The funding you provided will allow us to finance continuing operations in the courts and to address workload needs.

We are particularly appreciative of the $25 million you provided in emergency funding to respond to workload associated with immigration enforcement initiatives.

We are also grateful for two provisions that were included in the omnibus bill: the increase in the non-capital hourly rate for panel attorneys that you have referred to and the pilot project in our court security program.

FISCAL YEAR 2009 BUDGET REQUEST

Turning to the 2009 budget request, the judiciary is requesting $6.7 billion, an increase of $475 million over the 2008 enacted level; 86 percent of the increase is for standard pay and non-pay inflationary adjustments and for adjustments to base, reflecting increases in space, information technology, defender services, and court security programs. We are not requesting any new staff in clerks and probation offices.

The remaining $68 million of our requested increase is primarily for program improvements in our information technology program and an enhancement in the defender services program that you already referred to, increasing the hourly rate for private panel attorneys. We are appreciative of the increase you provided this year but believe an additional increase is warranted.

Our budget request reflects our continuing efforts to contain costs. We are now more than 3 years into an intensive effort to reduce costs throughout the judiciary and our cost containment program is producing results.

We have achieved so far the most significant savings in our space and facilities program through an ongoing rent validation project in which our court staff identify errors in rent for GSA to correct

and give us rent credits. GSA has been very cooperative in this endeavor.

In the information technology area, we are consolidating the deployment of computer servers which generate savings from reduced maintenance and equipment replacement costs.

We are also containing personnel costs. At its September 2007 meeting, the Judicial Conference approved recommendations from a major court compensation study that will slow the growth in personnel costs. Containing costs is a top priority for us.

COURT SECURITY PILOT PROJECT

Let me talk briefly about the pilot project approved in the 2008 omnibus bill. During my testimony last year before you, I discussed the judiciary's concerns regarding the expense and quality of security provided the courts by the Federal Protective Service. Chairman Durbin, you responded quickly to our concerns and convened a meeting with Director Duff and the Directors of the Marshals Service and the FPS.

As a result of your personal interest and commitment to improve court security, the subcommittee's bill included a provision for a pilot project permitting the Marshals Service to assume perimeter security duties from FPS at seven courthouses that have been selected. The Dirksen Federal Courthouse in Chicago will be the first pilot site to move forward. The project will begin later this year and will be in effect for approximately 18 months. We will provide you an evaluation of the project.

IMPACT OF INCREASED IMMIGRATION ENFORCEMENT

An issue that has received significant attention from Congress and the administration in recent years is illegal immigration. Despite zero tolerance immigration enforcement initiatives like Operation Streamline, in recent years resource constraints in the justice enforcement system on the border have limited the number of immigration cases prosecuted. It now appears that additional resources are making their way to the border through the Department of Justice's emergency funding received in 2008 and potentially through the funding requested in the President's 2009 budget. We believe the courts' workload will increase from this infusion of resources. Although we are not requesting funding for new clerks or probation staff on the border or elsewhere, we are very grateful for your provision of $45 million over the last 2 years to address the immigration-related workload so that we can respond in the short term to any increased workload.

We do need additional judgeships on the Southwest border. The Judicial Conference has requested 10 more judgeships on the border, and we make a special plea for the subcommittee's support of the $110 million requested for GSA in the President's budget to fund fully a new Federal courthouse in San Diego. This is our top space priority.

PREPARED STATEMENTS

I would ask that my statement, along with the others you referred to, be placed in the record. And, of course, we are available for your questions.

[The statements follow:]

PREPARED STATEMENT OF HON. JULIA S. GIBBONS

INTRODUCTION

Chairman Durbin, Senator Brownback, and members of the Subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2009. In doing so, I will apprise you of some of the challenges facing the Federal courts. This is my fourth appearance before an appropriations subcommittee on behalf of the Federal Judiciary and my second appearance before the Financial Services and General Government panel. Appearing with me today is James C. Duff, the Director of the Administrative Office of the United States Courts.

In addition to a discussion of our fiscal year 2009 request, my testimony will cover several policy issues that impact the Federal courts. I will also update you on the Judiciary's efforts to contain costs as well as discuss several information technology innovations that are examples of the Judiciary(s continual efforts to improve Federal court operations.

STATEMENTS FOR THE RECORD

Mr. Chairman, in addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

FISCAL YEAR 2008 FUNDING

Mr. Chairman and Senator Brownback, let me begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2008 appropriations cycle. The funding you provided, combined with greater than anticipated fee carryover balances and reduced requirements due to our cost containment initiatives, will allow us to finance continuing operations in the courts as well as to address workload needs. We are particularly appreciative of the $25 million you provided the Judiciary in emergency funding to respond to workload associated with immigration enforcement initiatives being implemented by the Department of Homeland Security and the Department of Justice. We are fully cognizant of the difficult funding choices you faced during conference on the omnibus bill and appreciate your willingness to support the needs of the Judiciary. We appreciated the opportunity to work with the Subcommittee to identify our highest priority funding needs when your allocation was significantly reduced during conference on a final bill.

We also are grateful for several provisions included in the omnibus bill, which we believe will improve Federal court operations. Two that are particularly important are the pilot project to assess the feasibility of transferring responsibility for perimeter security at several designated primary courthouses from the Federal Protective Service to the United States Marshals Service and the increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act. I will discuss the pilot project in more detail next and return to panel attorney rates later in my testimony.

COURT SECURITY

Mr. Chairman, during my testimony last year I conveyed to the Subcommittee the Judiciary's concerns regarding the expense and quality of security provided the courts by the Federal Protective Service (FPS). FPS provides, on a reimbursable basis, exterior perimeter security for Federal agencies, including at courthouses and multi-tenant court facilities. The Judiciary's FPS costs are paid from our Court Security appropriation and fiscal year 2009 billings are projected to be $72 million.

Last year I spoke of incidents of inoperable FPS-provided exterior cameras at courthouses and the absence of cameras altogether at key locations resulting in

"dead zones" with no camera surveillance, despite our paying FPS for the equipment. Security lapses such as these left courthouses with serious security vulnerabilities. Fortunately, to help ensure that the courts had adequate security, the United States Marshals Service (USMS) assumed responsibility for repairing or replacing FPS-provided perimeter cameras at a number of courthouses where it was apparent that FPS did not have the resources to do so. This resulted in the Judiciary's paying for the same services twice: once to FPS in its security charges, and also to the USMS in the funding we transferred to it for systems and equipment for interior and perimeter courthouse security. The Judicial Conference had become increasingly concerned about this issue and consequently, in March 2007, it endorsed a recommendation to expand the USMS's current mission to include perimeter security of court facilities nationwide where the Judiciary is the primary tenant.

Mr. Chairman, within a month after last year's hearing you convened a meeting with the Directors of the United States Marshals Service, Federal Protective Service, and the Administrative Office of the United States Courts to learn more about this issue. As a result of your personal interest and commitment to improve court security, the Senate version of the fiscal year 2008 Financial Services and General Government appropriations bill (H.R. 2829) included the provision approving a pilot project permitting the USMS to assume responsibility from FPS for perimeter security at several designated courthouses. And, as I just mentioned, the provision was included in the final conference agreement on the fiscal year 2008 omnibus appropriations bill thus allowing the Judiciary and the USMS to begin implementation of the pilot. Specifically, the pilot project involves the USMS monitoring the exterior of the courthouses with court security officers and assuming control of FPS monitoring equipment. The USMS, working with the Administrative Office of the U.S. Courts, selected seven courthouses for the pilot. I would note that the Everett McKinley Dirksen U.S. Courthouse in Chicago will be the first pilot site to move forward. The other six sites are: the Theodore Levin U.S. Courthouse, Detroit, Michigan; the Sandra Day O'Connor U.S. Courthouse, Phoenix, Arizona; the Evo A. DeConcini U.S. Courthouse, Tucson, Arizona; the Russell B. Long Federal Building/U.S. Courthouse, Baton Rouge, Louisiana; the Old Federal Building and Courthouse, Baton Rouge, Louisiana; and the Daniel Patrick Moynihan U.S. Courthouse, New York, New York.

The pilot project is anticipated to begin in the fourth quarter of fiscal year 2008 and will be in effect for approximately 18 months at which time an evaluation of the pilot will be provided to the Subcommittee. The annualized cost of the pilot is estimated to be $5 million, which will be offset by anticipated reductions in FPS billings. We appreciate your concern with the security of our courthouses, and we will provide the Subcommittee with updates as the pilot project gets underway.

Work of the United States Marshals Service

I would like to say a few words about the vitally important work of the United States Marshals Service. Inside the courthouse, judges, court staff, attorneys, jurors, defendants, litigants, and the public depend entirely on the USMS for their safety. Heightened security at courthouses due to high-threat trials and terrorism concerns have made the work of the USMS more difficult, and it has responded extremely well to those challenges. For judges like myself, the USMS also ensures our security outside of the courthouse, and it takes this charge seriously. In September 2007, the USMS established a new Threat Management Center that serves as the nerve center for responding to threats against the Judiciary. The Center provides vital data to U.S. Marshals nationwide on threats against judges and court personnel. The USMS also has overseen the installation of nearly all of the 1,600 intrusion detection systems in the homes of Federal judges in order to provide increased judicial security outside of courthouse facilities. This has been a 2-year effort and includes ongoing system monitoring by a security firm. All of us in the Federal court family are grateful to John F. Clark, Director of the U.S. Marshals Service, his staff, and the U.S. Marshals throughout the 94 judicial districts for their dedication and responsiveness to the security needs of the Federal Judiciary. The USMS operates within very tight resource levels, and we urge Congress to fund fully the USMS's fiscal year 2009 budget request to enable it to continue meeting its statutory mandate to protect the Federal Judiciary.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

Mr. Chairman, I would like to discuss an issue that has received some attention in recent months: the changes to Federal sentencing guidelines for crack cocaine offenses approved by the United States Sentencing Commission. The Commission is a bipartisan, independent agency within the Judicial Branch that was established

by the Sentencing Reform Act of 1984 to develop national sentencing policy for the Federal courts. The Commission promulgates the sentencing guidelines that Federal trial court judges consult when sentencing defendants convicted of Federal crimes.

On May 1, 2007, the Commission submitted a package of amendments to the Federal sentencing guidelines that, in the absence of congressional action to the contrary, went into effect on November 1, 2007. Among the amendments was one that modified the Federal sentencing guidelines for crack cocaine offenses. The amendment reduced the base offense level, or starting point, for crack cocaine offenses under the guidelines downward by two offense levels. This amendment does not affect the statutory mandatory minimum penalties for crack cocaine offenses established by Congress. The Commission took this action to alleviate some of the longstanding problems associated with the penalty scheme for cocaine offenses, which requires 100 times more powder than crack cocaine to receive the same statutory mandatory minimum penalty commonly referred to as the (100-to-1 ratio.) As a result of the amendment, the average sentence for crack cocaine offenders sentenced on or after November 1, 2007 will be approximately 16 months less than those sentenced before that date.

The Commission is authorized by statute to decide whether amendments that reduce penalties should be given retroactive effect. In December 2007, the Commission voted unanimously to give retroactive effect to the amendment for crack cocaine offenses. Retroactivity of the amendment became effective on March 3, 2008.

Pursuant to statute, once the Commission has given an amendment retroactive effect, a defendant, the director of the Bureau of Prisons, or a court on its own may move to have a defendant's term of imprisonment reduced pursuant to the Commission's policy statement on retroactivity and the limits of the amendment. The Commission estimates that approximately 19,000 Federal offenders over a span of several years may be eligible to seek to have their terms of imprisonment reduced as a result of retroactivity. These individuals were sentenced throughout the country although a large number of potentially eligible offenders were sentenced in districts located within the Fourth Circuit (West Virginia, Virginia, Maryland, North Carolina, and South Carolina).

A Federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and how much that sentence should be lowered. That determination will be based on many factors, including whether the offender's reduced sentence or release would pose a danger to public safety.

I will not discuss the merits of retroactivity since such policy decisions are outside the Budget Committee's area of responsibility; however, I will note that the Criminal Law Committee of the United States Judicial Conference supported the Commission's decision on retroactivity. The Criminal Law Committee and its staff at the Administrative Office of the United States Courts have been working closely with the Commission to give the courts sufficient time, resources, and guidance to prepare for and process these cases. It is this process that I would like to take a moment to discuss.

We anticipate there may be an initial surge of motions for reductions in sentence filed in the Federal courts. These filings will be handled by various district court components, including district judges, clerks offices, probation and pretrial services offices, and Federal defender offices. It is generally agreed that a large number of motions for a reduction in sentence will not involve court hearings and will be decided on written filings, so our workload associated with processing those cases should not be unduly burdensome. The cases that require hearings will require more court resources. At present, no extraordinary measures have been necessary to address the increased workload due to retroactivity, although additional resources will be available if needed for smaller districts that may be disproportionately impacted by the number of Federal offenders seeking a reduction in sentence based on retroactivity.

We believe retroactivity will have the greatest impact on our probation offices. The crack cocaine offenders who may be released after a Federal judge grants the motion for a reduction in sentence will require close probation supervision, drug testing, and possibly drug and other treatment services as do other Federal offenders leaving Federal prison. At this time, however, our fiscal year 2009 budget does not request additional staffing or other resources associated with retroactivity of the crack cocaine sentencing amendment. The Judiciary believes the additional workload associated with retroactivity can be absorbed within existing resource levels.

IMPACT OF INCREASED BORDER ENFORCEMENT

Another issue that has received significant attention from Congress and the administration is illegal immigration, so I would like to discuss the impact of increased

border and immigration enforcement initiatives on the work of the Federal courts. In recent years the administration has dedicated significant resources to address the issue of illegal immigration. The President's fiscal year 2009 budget includes $12 billion for the Department of Homeland Security (DHS) for border security and enforcement efforts, a 19 percent increase over fiscal year 2008, and a more than 150 percent increase since 2001. DHS has used the funding to increase the number of border patrol agents significantly, particularly on the Southwest border with Mexico. Since 2001, more than 5,000 additional border patrol agents have been hired with most of them placed along the southwest border. In fiscal year 2008, DHS received funding to hire an additional 3,000 border patrol agents, and the President's fiscal year 2009 budget includes funding for another 2,200 agents, bringing the total to 20,000 agents. When fully staffed the Border Patrol will have more than doubled in size since 2001.

The level of criminal case filings in the Federal courts in the five judicial districts along the southwest border is high by historical standards—19,825 filings in 2007 versus 17,184 in 2001—but filings have not increased commensurate with the increased resources provided to DHS for border enforcement. Despite zero tolerance border initiatives such as Operation Streamline in which nearly everyone apprehended for violating U.S. immigration laws is prosecuted, resource constraints in the justice system have precluded more cases from being prosecuted in the Federal courts. Staffing shortages in U.S. Attorney offices, lack of detention beds needed to secure offenders awaiting prosecution, and staffing constraints in U.S. Marshals offices have resulted in the establishment of certain threshold levels in some border districts that must be met before a case is prosecuted. For example, a U.S. Attorney in one district may prosecute someone coming into the country illegally after the tenth attempt, while a U.S. Attorney in another district may prosecute after the fifth attempt.

To the extent the Federal courts are perceived as a factor that limits the number of cases that can be prosecuted on the border, I would note it is Congress that establishes the number of district judgeships and the districts to which they are assigned, and Congress and the Executive Branch that control the authorization, funding, and construction of new courthouses. The district courts on the southwest border have not received any new district judgeships since 2002 despite Judicial Conference requests for additional judgeships in 2003 (11 judgeships), 2005 (11 judgeships), and 2007 (10 judgeships). In recent years Congress has been responsive to the need for new courthouse space on the southwest border, and we hope that you will support the additional $110 million included in the President's fiscal year 2009 budget to fund fully a new Federal courthouse in San Diego, California. The Judicial Conference designated the San Diego courthouse a judicial space emergency in 2003, but the General Services administration has been unable to award a contract for the project due to escalating construction costs in Southern California.

It now appears that Congress has taken steps to address the resource needs across the justice system on the southwest border by providing additional resources beyond those provided to DHS. In fiscal year 2008 the Department of Justice received $7 million in emergency funding to hire more assistant U.S. Attorneys (AUSAs) in the five judicial districts along the southwest border. The U.S. Marshals Service received $15 million in emergency funding to address southwest border workload needs including the hiring of 100 additional deputy U.S. Marshals. The President's fiscal year 2009 budget includes $100 million for a new Southwest Border Enforcement Initiative focusing law enforcement and prosecutorial efforts on fighting violent crime, gun smuggling, and drug trafficking in that region. If funded, this initiative will increase the number of AUSAs along the southwest border by another 50 positions. The President's budget also seeks $88 million to expand detention capacity along the southwest border. The resultant increase in criminal filings we expect to see from this infusion of resources will impact our district judges, clerks offices, probation and pretrial services offices, and Federal defender offices on the border. I would note, however, that the Judiciary's fiscal year 2009 budget submission does not request funding for new clerks or probation office staff on the border or elsewhere. Congress provided the Judiciary with $45.4 million over the last 2 years—$20.4 million in fiscal year 2007 and $25 million in fiscal year 2008—to address immigration-related workload so, from a staffing perspective, the courts are well positioned in the short term to respond to the increased workload that we expect will materialize. However, as I just mentioned, we do require additional district judgeships on the southwest border, and construction of a new Federal courthouse in San Diego is the Judiciary's top space priority.

COST CONTAINMENT EFFORTS

The Judiciary recognizes that continuing pressures on the Federal budget due to the conflicts in Iraq and Afghanistan, investments being made to improve security here at home, and the goal of eliminating the budget deficit by 2012, will necessitate austere Federal spending going forward, particularly for non-security discretionary programs. Indeed, the President's fiscal year 2009 budget proposes a 0.3 percent increase in this category of spending, well below the rate of inflation. The administration and Congress are rightfully concerned about overall Federal spending and budget deficits, and we recognize that you face tough choices. I want to assure the Subcommittee that the Judiciary is doing its part to contain costs.

We are now more than 3 years into an intensive effort to reduce costs throughout the Judiciary. As I mentioned in my testimony last year, this cost containment effort was born out of our fiscal year 2004 experience in which a funding shortfall necessitated staff reductions of 1,350 clerk and probation office employees, equal to 6 percent of the courts' on-board workforce. As a result of this situation and the prospect of continuing Federal budget pressures, the late Chief Justice William H. Rehnquist charged the Judicial Conference's Executive Committee with developing an integrated strategy for controlling costs. After a rigorous 6-month review by the Judicial Conference's various program committees, the Executive Committee prepared, and the Judicial Conference endorsed in September 2004, a cost-containment strategy for the Federal Judiciary. The strategy focuses on the primary cost drivers of the Judiciary's budget—compensation costs and the rent we pay to the General Services Administration for courthouses and leased office space. We have had great cooperation Judiciary-wide as we have moved forward on implementing cost containment initiatives. I will highlight several cost containment initiatives for you.

Containing Rent Costs

The amount of rent we pay to GSA has been a matter of concern to the Judiciary for a number of years. Since fiscal year 2004 we have made a concerted effort to contain rent costs, with considerable success. In fiscal year 2004, prior to the implementation of cost containment, we projected that our GSA rent bill would be $1.2 billion in fiscal year 2009. I am pleased to report that our current GSA rent estimate for fiscal year 2009 is now projected to be $200 million less, or $1 billion, 17 percent below the pre-cost containment projection. Following are two of our rent containment initiatives that have contributed to these reduced rent costs.

—*Rent Validation Project*.—In recent years we have been working cooperatively with GSA to reduce our space rent costs through a rent validation program that has yielded significant savings and cost avoidances. This rent validation initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery were savings and cost avoidances over 3 fiscal years totaling $30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to analyze and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through this national effort, in fiscal year 2007 we identified additional overcharges totaling $22.5 million in multi-year savings and cost avoidances, bringing cumulative savings/cost avoidances to $52.5 million. We anticipate receiving additional rent adjustments and credits resulting from over $10 million in rent errors that we recently reported to GSA. By identifying and correcting space rent overcharges we have been able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.

—*Rent Caps*.—To contain costs further, the Judiciary established budget caps in selected program areas in the form of maximum percentage increases for annual program growth. For our space and facilities program, the Judicial Conference approved a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years 2009 through 2016. By comparison, the increase in GSA rent in our fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs. Under this initiative, circuit judicial councils around the country will be responsible for managing rent costs in their circuits, which will require the councils to prioritize space needs—and in some instances deny requests for new space—in order to stay within the 4.9 percent cap.

Containing Information Technology Costs

Another cost containment success has been identifying and implementing more cost-effective approaches in deploying computer servers around the country. Before

this initiative, each court unit maintained local servers to access Judiciary applications and databases. New technology, along with improvements in the Judiciary's national data communications network, has allowed the consolidation of servers at a single location without compromising the performance levels of existing applications. In some cases performance has actually improved. As a result of this initiative, the Judiciary reduced by 89 the number of servers needed to run the jury management program, producing savings of $2 million in the first year and expected savings of $4.8 million through fiscal year 2012. In addition, servers that run the case management system in our probation program were consolidated, with projected savings and cost avoidances of $2.6 million through fiscal year 2012. The Judiciary expects expanded implementation of this initiative to result in significant information technology cost savings or cost avoidances. A big cost saver will be the consolidation of servers for the Judiciary's national accounting system in fiscal year 2008, which is expected to achieve savings and cost avoidances totaling $55.4 million through fiscal year 2012.

Containing Personnel Costs

A major focus of the Judiciary's cost containment efforts involves controlling personnel costs. At its September 2007 meeting, the Judicial Conference approved recommendations from a major court compensation study which will slow the growth in personnel costs throughout the Judiciary, specifically in clerks and probation offices and judges' chambers staff. The approved actions will reduce funding available to the courts for annual salary step increases for employees, limit the number of career law clerks (who are typically paid more than term law clerks), revise salary setting policies for new law clerks, and modernize the Federal courts' position benchmarks which govern the classification and grading of staff nationwide. We estimate these measures may save up to $300 million from fiscal year 2009 through fiscal year 2017.

INNOVATION IN THE FEDERAL COURTS

While we look to contain costs wherever possible, we continue to make investments in technologies that improve Federal court operations, enhance public safety, and increase public access to the courts to name just a few examples. The Judiciary is a leader in taking state-of-the-art technology and adapting it to the courts' unique needs, and we continually look for innovative ways to apply new technologies to our operations. These investments are made possible through the funding we receive from Congress, and we are grateful for Congress's continuing support of our information technology program. Let me describe for you several of our innovations.

Use of Global Positioning System Technology

Some of our probation and pretrial services offices are now using Global Positioning System (GPS) technology to monitor around the clock the location of individuals under pretrial release or post-conviction supervision. As a condition of their sentence or supervised release, an offender or defendant might be required to carry a GPS unit. Some GPS tracking devices let officers send a text message or voice message directly to the receiver worn by the offender enabling an alert to be sent if the offender wanders into forbidden territory.

An incident that occurred in California offers an example of the application of GPS technology. A defendant on a GPS tracking device was ordered by a Federal judge to stay away from his ex-wife due to a prior history of domestic violence. He was also subject to an active restraining order. In the middle of the day, the defendant drove by his ex-wife's place of employment. The pretrial services officer received a text message alert and immediately contacted the defendant on the tracking device, instructing him to come to the office. The officer contacted the ex-wife, the court was notified, and appropriate action was taken. In this instance, the pretrial services officer had established exclusion zones around the wife's home and work. For convicted sex offenders whose victims included children, these exclusion zones can include schools, parks, and playgrounds. Many offenders help defray the cost of monitoring on an ability-to-pay basis. GPS monitoring can cost up to $9 per day, roughly double the cost of less expensive electronic monitoring, but still well below the more than $63 per day required to incarcerate an offender.

Case Management/Electronic Case Files System

The Case Management/Electronic Case Files (CM/ECF) system is an electronic case management system that provides Federal courts with docket management capabilities, including the option of permitting case documents to be filed with the court over the Internet. Managing case filings electronically is more cost efficient than the labor-and-space intensive process of paper filings previously used. The elec-

tronic case filing system was launched in November 1995, when a team from the Administrative Office of the United States Courts helped the U.S. District Court in the Northern District of Ohio cope with more than 5,000 document-intensive asbestos cases. The court faced up to 10,000 new pleadings a week, a workload that quickly became unmanageable. The team developed a system that allowed attorneys to file and retrieve documents and receive official notices electronically. More than 10 years and several upgrades later, the system has fundamentally changed how the entire judicial system operates. The system is currently operating in all of our district and bankruptcy courts and will be operational in all of the regional courts of appeals in early 2009. Over 30 million cases are on CM/ECF systems nationwide, and nearly 350,000 attorneys and others have filed documents over the Internet. On average, four million new electronic documents are filed into the system each month, and roughly half of those are filed over the Internet by attorneys. CM/ECF is considered the world's most comprehensive court electronic case filing system. It has been one of the most important innovations in U.S. Federal court administration.

Public Access to Court Electronic Records

The Public Access to Court Electronic Records (PACER) system is an electronic access service run by the Federal Judiciary that allows the public to obtain case and docket information from Federal appellate, district, and bankruptcy courts via the Internet. The PACER system offers an inexpensive, fast, and comprehensive case information service to any individual with a computer and Internet access. Users can retrieve, among other information, a listing of parties and participants in a case, a compilation of case-related information, such as cause of action, nature of suit and dollar demands, judgments or case status, and appellate court opinions. The data is displayed directly on the user's computer screen within a few seconds. The system is available 24 hours a day and is simple enough that little user training is required. The PACER program has been hugely successful. In 2007 alone, over 350 million requests for information were processed by PACER. As directed by Congress, nominal fees are charged for accessing court records although some records are available without charge. Given the high-volume usage of PACER, the fees collected in the aggregate are substantial. Congress has authorized the Judiciary to utilize these fees to run the PACER program as well as to offset some costs in our information technology program that would otherwise have to be funded with appropriated funds. The Judiciary's fiscal year 2009 budget request assumes $68 million in PACER fees will be available to finance information technology requirements in the courts' Salaries and Expenses account, thereby reducing our need for appropriated funds.

THE JUDICIARY'S WORKLOAD [1]

I turn now to a discussion of the workload facing the courts. As indicated in the caseload table in our fiscal year 2009 budget request, 2008 caseload projections are used to compute fiscal year 2009 staffing needs. Our projections indicate that caseload will increase slightly in probation (+1 percent) and pretrial services (+3 percent) and increase substantially for bankruptcy filings (+23 percent). For 2008 we are projecting small declines in appellate (−3 percent) and criminal (−3 percent) caseload, and a steeper decline in civil filings (−8 percent). Let me discuss some recent trends and caseload drivers and offer some context for these projections.

Probation and Pretrial Services [1]

Workload in our probation and pretrial services programs continues to grow. The number of convicted offenders under the supervision of Federal probation officers hit a record 115,930 in 2007 and is expected to increase again in 2008 to 116,900. In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1985, fewer than half of the offenders under supervision had served time in prison. By 2007, the percentage had climbed to 80 percent. As these figures indicate, probation officers no longer deal primarily with individuals sentenced to probation in lieu of prison. Offenders coming out of prison on supervised release have greater financial, employment, and family problems than when they committed their crimes. In addition, the number of offenders sentenced in Federal court with prior criminal convictions more than doubled between fiscal years 1996 and 2006, and the severity of the criminal histories of persons under probation officer supervision has been increasing as well. Offenders re-entering the community after serving time in prison require close supervision by a probation offi-

[1] Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2008 workload reflects the 12-month period from July 1, 2007 to June 30, 2008).

cer to ensure they secure appropriate housing and employment. Successful re-entry improves the likelihood that offenders will pay fines and restitution and become taxpaying citizens.

Recent legislation will also increase the workload of probation and pretrial services officers. For example, we expect that the Adam Walsh Child Protection and Safety Act of 2006 will significantly increase the number of sex offenders coming into the Federal court system. The Adam Walsh Act also increases the registration requirements for sex offenders, which means probation officers must coordinate closely with State and local authorities to ensure that law enforcement and the public receive the required notice. Monitoring the behavior of sex offenders is challenging and requires intense supervision on the part of probation and pretrial services officers to protect the community.

As I discussed earlier in my testimony, the retroactive application of the crack cocaine sentencing amendment will also have an impact on the work of probation officers although it is difficult to predict with certainty at this point how many current Federal prison inmates will gain early release and enter the Federal probation system.

Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005, has significantly affected workload trends in the Nation's bankruptcy courts. While filings are still below pre-BAPCPA levels—751,056 filings in 2007 versus 1,635,725 filings in 2004—we forecast that filings will increase 23 percent in 2008 to 923,000 and top one million filings in 2009. The state of the economy, particularly as it impacts home foreclosures and credit availability, will be a major factor in the number of personal bankruptcies—which constitute the majority of bankruptcy cases. It is possible that 2008 bankruptcy filings will be above the current projection.

The number of filings alone, however, should not be viewed as the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions far more complex and time-consuming. Our bankruptcy courts have indicated that the actual per-case work required of the bankruptcy courts has increased significantly under the new law, at least partially offsetting the impact on the bankruptcy courts of lower filings. For example, BAPCPA requires Chapter 7 filers to complete and pass a complex "means test" and receive a credit counseling briefing by an approved agency. Also, filers under Chapters 7 and 13 may not receive a discharge of their debts unless they have completed an approved financial management course. These and other new requirements must be reviewed by the clerk's office, which must take further action if the filers do not meet the requirements. BAPCPA also requires more than 35 new motions and pleadings in various chapters of the bankruptcy code. Each new motion requires judicial review and can result in hearings, orders, and opinions, thus consuming more judicial resources.

Appellate Filings

After hitting an all-time high of 68,313 filings in 2006, appellate caseload declined to 58,809 filings in 2007 and is expected to decline by 3 percent to 57,300 filings in 2008. This decline comes on the heels of significant workload growth from 2002 to 2006 during which filings increased 20 percent initially due to a surge in challenges to Board of Immigration Appeals (BIA) decisions in the appellate courts and later due to the large number of criminal and habeas corpus petitions filed by State and Federal prisoners from 2004 to 2006 challenging their sentences pursuant to the Supreme Court's decisions in *Blakely* v. *Washington* (2004), and in the consolidated cases, *United States* v. *Booker* and *United States* v. *Fanfan* (2005). After the initial surge of sentence-related filings associated with these decisions, we are now seeing appellate filings for criminal and habeas corpus petitions approach pre-*Blakely* and *Booker/Fanfan* levels.

About one-third of all BIA decisions are challenged in the Federal appellate courts with 70 percent of those challenges occurring in the Second and Ninth Circuits. While BIA appeals have dropped in the last year, these cases continue to demand extensive resources since they often turn on a credibility determination by a Department of Justice immigration judge, thus requiring close judicial review of a factual record by the appellate courts.

Civil Filings

Civil filings in the courts generally follow a more up and down filing pattern. In 2005 civil filings reached a record 282,758 filings, declined to 244,343 filings in 2006, then increased again to 272,067 filings in 2007. The increase in 2007 was due primarily to asbestos diversity case filings in the Eastern District of Pennsylvania.

The Judiciary projects civil case filings will continue this up and down pattern, decreasing 8 percent to 250,500 filings in 2008.

Criminal Filings

Criminal filings in the Federal courts have been trending downward the last several years, and this trend is expected to continue through 2008. From the previous year, filings declined 2 percent in 2005, 3 percent in 2006, and a half-percent in 2007 to 67,503 filings. Filings are projected to decline another 3 percent in 2008 to 65,800 filings.

Last year I testified that criminal filings were likely depressed due to significant vacancies in AUSA positions nationwide and that once vacancies were filled criminal filings would reverse course and begin to increase. As I mentioned earlier in my testimony, it now appears that additional resources are being provided to fill AUSA positions, particularly in the five judicial districts along the Southwest border with Mexico. Also, the administration is committing more resources to the prosecution of sexual exploitation of children. In fiscal year 2008, the Department of Justice received $5 million to hire 40 additional AUSAs to prosecute these exploitation cases under the Adam Walsh Act. I would emphasize that our criminal caseload projection for 2008 does not take into account the impact additional AUSAs will have on criminal case filings, so we may see 2008 filings above the projected level.

FISCAL YEAR 2009 BUDGET REQUEST

For fiscal year 2009, the Judiciary is seeking a 7.6 percent overall increase above the fiscal year 2008 enacted appropriations. The courts' Salaries and Expenses account, which funds clerks and probation offices nationwide, requires a 7.4 percent increase. Fiscal year 2009 appropriations requirements for each Judiciary account are included at Appendix A.

The goal of our fiscal year 2009 request is to maintain staffing levels in the courts at the level Congress funded in fiscal year 2008, as well as to obtain funding for several much needed program enhancements. As I noted earlier in my testimony, we are not requesting additional staff for our clerks or probation offices. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request submitted by the administration, I would note that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary's funding requirements essentially reflect basic operating costs of which more than 80 percent are for personnel and space requirements.

Eighty-six percent ($407 million) of the $475 million increase being requested for fiscal year 2009 funds the following base adjustments, which represent items for which little to no flexibility exists:

—Standard pay and benefit increases for judges and staff. This does not pay for any new judges or staff but rather covers the annual pay adjustment and benefit increases (e.g., COLAs, health benefits, etc.) for currently funded Judiciary employees. The amount budgeted for the cost-of-living adjustment is 2.9 percent for 2009.

—An anticipated increase in the number of on-board senior Article III judges.

—The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2009 versus the level available to finance the fiscal year 2008 financial plan (see discussion on the following page).

—Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an increase in Federal Protective Service charges for court facilities.

—Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program which, in recent years, has allowed the courts to "do more with less"—absorbing workload increases while downsizing staff.

—Mandatory increases in contributions to the Judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers.

—Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.

—Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective assistance of counsel. The CJA provides that the Federal courts shall appoint counsel for those persons who are financially unable to pay for their defense.

After funding these adjustments to base, the remaining $68 million requested is for program enhancements. Of this amount:

—$33 million will provide for investments in new information technology projects and upgrades, and courtroom technology improvements.

—$18 million to increase the non-capital panel attorney rate from $100 to $118 per hour. I will discuss this requested increase in more detail in a moment.

—$8 million is requested for the Supreme Court's exterior renovations and roof system repairs.

—$5 million is for additional staff and associated costs to address fiscal year 2009 workload requirements (32 FTE), two additional magistrate judges and staff (9 FTE), library renovations and new equipment at the Court of Appeals for the Federal Circuit, and the start-up costs for two new Federal defender organizations.

—$4 million would provide for necessary investments in court security, such as court security systems and equipment and new positions at the United States Marshals Service (9 FTE).

Non-Appropriated Sources of Funding

I would like to discuss briefly the non-appropriated sources of funding that the Judiciary uses to partially finance its operations and how they impact our appropriations needs. In addition to appropriations from Congress, the Judiciary collects fees from bankruptcy and civil case filings, from the public for on-line access to court records, and from other sources. Fees not utilized during the year they are collected may be carried over to the next fiscal year to offset appropriations requirements in that year. Every fee dollar collected that is not needed to finance current year needs represents a dollar less that the Judiciary must seek from Congress in the following year.

In formulating the Judiciary's fiscal year 2009 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2009 requirements. Because the projection for carryover balances are below the level that was available to finance fiscal year 2008 operations, the fiscal year 2009 request includes a line item requesting appropriated funds—$95 million in the courts' Salaries and Expenses account—to replace the anticipated decline in carryover balances. (New fee collections are projected to be flat from fiscal year 2008 to fiscal year 2009 so there is no restoration requested or needed for that component of our financing.) While it is premature for me to identify a specific amount, I am confident that we will not need the full $95 million we requested to replace carryover balances. This is due to several factors, including the courts' frugal spending during the continuing resolution for the first quarter of fiscal year 2008 and fewer judge confirmations than we anticipated. As we did this past year, we will keep the Subcommittee apprised of changes to fee and carryforward projections that could impact our fiscal year 2009 appropriation needs as we move through fiscal year 2008. The Judiciary will submit the first of two fiscal year 2009 budget re-estimates to the Subcommittee in May 2008.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We believe that one program enhancement in our budget request deserves strong consideration in order to ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting $17.5 million to increase the non-capital panel attorney rate to $118 per hour, effective January 2009. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in Federal court in accordance with the Criminal Justice Act (CJA). In the fiscal year 2008 omnibus spending bill, the Subcommittee approved an increase in the non-capital rate paid to these panel attorneys from $94 to $100 per hour, and provided a cost-of-living adjustment to the capital rate from $166 to $170 per hour. These new rates took effect on January 1, 2008.

While we are very appreciative of the increase to $100 per hour for non-capital work, we believe a more significant increase is required to enable the courts to attract and retain enough qualified attorneys to accept appointments and to provide them a fair rate of pay. This is critical in order for the Judiciary to ensure that persons represented by panel attorneys are afforded their constitutionally guaranteed right to effective assistance of counsel.

We believe there is a direct relationship between the lack of qualified panel attorneys available to take CJA appointments and the significant financial difficulties panel attorneys encounter maintaining their legal practices at the current rate. It is predominantly solo and small-firm lawyers that take on CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of ap-

proximately $64 per hour, at the $100 rate, that leaves a net average of only $36 per hour, before taxes. We believe that this net rate of $36 per hour, when compared to the net national average "market rate" of $148 per hour for non-CJA private criminal cases, prevents the courts from attracting sufficient numbers of qualified attorneys to take CJA appointments because those attorneys can obtain higher pay on non-CJA cases. Each time a panel attorney is asked by the court to accept a non-capital CJA appointment, he or she must consider the inherent "opportunity" cost associated with the higher hourly rate he or she could otherwise earn on a non-CJA case.

The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. If the statutory COLAs provided to Federal employees (the base employment cost index component only) had been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2009 would be $136. While the Judicial Conference supports the $136 rate, it is mindful of the constrained Federal budget environment and, therefore, proposes attaining the authorized rate in two stages, an $18 per hour increase in fiscal year 2009 from $100 to $118 per hour, with a second increase to $140 per hour in fiscal year 2010 (the $140 rate includes a $4 COLA to the fiscal year 2009 rate of $136). The Judiciary is committed to fully restoring the non-capital panel attorney rate, in a cost-conscious manner, by implementing the authorized rate over 2 years.

I will close on this topic by reiterating that the Judiciary greatly appreciates the $100 non-capital rate Congress provided in fiscal year 2008, but the concern remains that, after overhead is considered, the rate does not provide compensation that will attract enough qualified panel attorneys to take on the complex work involved in Federal criminal cases. I urge the Subcommittee to provide the funding necessary to increase the non-capital panel attorney rate to $118 per hour in fiscal year 2009.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

I would like to briefly outline the important work performed by the Administrative Office (AO) of the United States Courts. Year in and year out, the AO provides critical support to the courts. With only a fraction (1.3 percent) of the resources that the courts have, the AO does a superb job of supporting our needs.

The AO has key responsibilities for judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, program management, and information technology services to the courts. None of these responsibilities has gone away and new ones are continually added, yet the AO staffing level has been essentially frozen for 15 years. As an example, despite no new staff, the AO has been instrumental in implementing the Judiciary's cost containment strategy which has achieved significant savings and cost avoidances.

In my role as Chair of the Judicial Conference Committee on the budget, I have the opportunity to work with many staff throughout the AO. They are dedicated, hard working, and care deeply about their role in supporting this country's system of justice.

The fiscal year 2009 budget request for the Administrative Office is $82 million. The AO's request represents a current services budget, no additional staff or program increases are sought. All of the requested increase is necessary to support current services, mainly standard pay and general inflationary increases, as well as funding to replace the anticipated lower level of carryover amounts with appropriated funds in fiscal year 2009.

I urge the Subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and lead the efforts for them to operate more efficiently. Director Duff discusses the AO's role and budget request in more detail in his testimony.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

I also urge the Subcommittee to approve full funding for the Federal Judicial Center's request of $25.8 million for fiscal year 2009.

The Center's director, Judge Barbara Rothstein, has laid out in greater detail the Center's needs in her written statement. I simply add that the Center plays a vital role in providing research and education to the courts. The Center's research and its educational programs are highly respected and valued for their quality and objectivity. The Judicial Conference and its committees request and regularly rely on research projects by the Center. The Center's educational programs for judges and

court staff are vital in preparing new judges and court employees to do their jobs and in keeping them current so that they can better deal with changes in the law, and in tools—like technology—that courts rely on to do their work efficiently.

The Center has made good use of its limited budget. It uses several technologies to deliver information and education to more people more quickly and inexpensively. The relatively small investment you make in the Center each year (less than one-half of 1 percent of the Judiciary's budget) pays big dividends in terms of the effective, efficient fulfillment of the courts' mission.

CONCLUSION

Mr. Chairman, I hope that my testimony today provides you with some insight into the challenges facing the Federal courts as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2009 is going to be another tight budget year as increased mandatory and security-related spending will result in further constrained domestic discretionary spending. We recognize the fiscal constraints Congress is facing. Through our cost-containment efforts and information technology innovations we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know you agree that a strong, independent Judiciary is critical to our Nation. I urge you to fund this request fully in order to enable us to maintain the high standards of the U.S. Judiciary.

Thank you for your continued support of the Federal Judiciary. I would be happy to answer any questions the Subcommittee may have.

APPENDIX A.—JUDICIARY APPROPRIATIONS

[Dollars in thousands]

Appropriation account	Fiscal year 2008 enacted level (Public Law 110–161) [1]	Fiscal year 2009 President's budget (Feb. 4, 2008)	Percentage change: fiscal year 2009 vs. fiscal year 2008 enacted
U.S. Supreme Court:			
Salaries & Expenses	$66,526	$69,777	+4.9
Care of Building and Grounds	12,201	18,447	+51.2
Total	78,727	88,224	+12.1
U.S. Court of Appeals for the Federal Circuit	27,072	32,357	+19.5
U.S. Court of International Trade	16,632	19,622	+18.0
Courts of Appeals, District Courts & Other Judicial Services:			
Salaries & Expenses:[1]			
Direct	4,619,262	4,963,091	+7.4
Vaccine Injury Trust Fund	4,099	4,253	+3.8
Total	4,623,361	4,967,344	+7.4
Defender Services [1]	846,101	911,408	+7.7
Fees of Jurors & Commissioners	63,081	62,206	−1.4
Court Security	410,000	439,915	+7.3
Subtotal	5,942,543	6,380,873	+7.4
Administrative Office of the United States Courts	76,036	81,959	+7.8
Federal Judicial Center	24,187	25,759	+6.5
Judiciary Retirement Funds	65,400	76,140	+16.4
U.S. Sentencing Commission	15,477	16,257	+5.0
Direct	6,241,975	6,716,938	+7.6
Vaccine Injury Trust Fund	4,099	4,253	+3.8
Total	6,246,074	6,721,191	+7.6

[1] Pursuant to Public Law 110–161, fiscal year 2008 appropriations include $25 million in emergency appropriations ($14.5 million in the courts' Salaries and Expenses account and $10.5 million in the Defender Services account) for workload associated with DOJ and DHS immigration enforcement initiatives.

PREPARED STATEMENT OF PAUL R. MICHEL, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Mr. Chairman, thank you for allowing me to submit my statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2009 budget request.

Our request totals $32,357,000, an increase of $5,285,000 (19.5 percent) over the fiscal year 2008 appropriation of $27,072,000. The primary justification for such an unusual increase is the need to accommodate seven senior judges who will expand our court's judicial output in 2009.

Thirty percent of this requested increase ($1,575,000) is for Congressionally and contractually mandated adjustments to base (such as COLAs and escalation in rent and contracts). The only addition included in the adjustment to the base appropriation is $298,000 to lease chambers outside the courthouse for senior judges for whom there is no space in the courthouse.

Four Federal Circuit judges are eligible to take senior status now; three more will become eligible in fiscal year 2009; and another judge will become eligible in fiscal year 2010. Of the three Federal Circuit judges who will become eligible to take senior status in fiscal year 2009, at least two are expected to do so. An increase to the Court's base of $298,000 will cover the cost of an off-site lease for these two judges and up to three of the other four senior judges who are eligible for senior status.

Seventy percent of the Federal Circuit's fiscal year 2009 budget request, $3,710,000, is to fund three specific program requests.

—The first specific program request ($1,860,000) is to build out off-site chambers for five senior judges.

—The second specific program request ($932,000) is for 12 law clerk positions for active judges, and

—The third specific program request ($918,000) is for court improvements and a court employee position.

PART 1

Half of the 70 percent increase for specific program requests ($1,860,000) will fund build out of leased chambers for five of the seven judges who either are, or will be, eligible to take senior status in fiscal year 2009. This amount is based on an estimate coordinated with the Administrative Office of the United States Courts and on personal experience with GSA in renovating chambers in this courthouse. This amount will provide the leased chambers with the furniture, furnishings and finishes consistent with the U.S. Courts Design Guide. The amount requested is the amount needed to support judges eligible and expected to take senior status now through fiscal year 2010 and for whom there is no room in the existing courthouse.

As noted, two of the seven judges who will be eligible to take senior status have indicated a desire to do so when they become eligible for senior status in fiscal year 2009. Personal circumstances make it likely that at least two more will also do so. It is imperative then that the Federal Circuit acquire suitably built-out, off-site leased chambers for the two judges who have indicated a desire to take senior status in fiscal year 2009, two or three of the four already eligible, and another who is likely to do so in fiscal year 2010.

PART 2

Twenty-five percent of the specific program requests ($932,000) will fund 12 additional law clerk positions. The Court is requesting $932,000 to cover the cost of hiring an additional law clerk for each of the court's active judges for 6 months of fiscal year 2009. The court's increased workload now justifies funding a fourth law clerk for each active judge. Four law clerks are the norm at every Federal Appeals Court in the Nation except the Federal Circuit. In our fiscal year 2008 appropriation, Congress authorized three additional law clerks but provided no funding. We are now requesting funding for all 12 additional law clerks: the three approved but unfunded in fiscal year 2008, and the remaining nine, for a total of 12, or one per judge.

Patent infringement cases make up one-third or more of the Federal Circuit docket. The number of patent infringement cases has grown by more than 25 percent in the 15 years since the third clerk was first provided. Patent infringement cases are critical to the Nation's economy, and the decisions of the Federal Circuit in these cases often have significant and sometimes dramatic economic implications for parties whose patents are upheld and found to have been infringed, whose patents are found not to have been infringed by other parties, and many other economic actors. The difficulty and complexity of patent infringement and other intellectual property cases have increased exponentially in recent years.

Most of the patent cases now filed in the Federal Circuit Court of Appeals are highly technical and require great insight and judgment. The issues presented in these cases involve arcane breakthroughs on the frontiers of science, technology, manufacturing, engineering, mathematics and medicine. In such cases legal judgments must be made, not only about the law itself but often on the basic underlying technical innovation, with few if any precedents, analogies or objective metrics to apply to help determine the outcome.

Many such cases involve a multitude of issues, no one of which can be ignored in an effort to narrow and focus the decision-making process as so often happens on appellate review. In patent infringement cases, all issues must typically be left together because together they frame the problem and the outcome. The practical effect is that one case takes on the nature of several, whose many issues must be understood individually and collectively before the court can integrate them into a unifying substantive decision.

Timeliness is also an issue in many of these cases because the speed of technological change can render a delayed decision essentially ineffectual in a rapidly-changing economic marketplace.

In the appeal of such cases the question is not only whether the law was correctly applied below, but also whether the science or technology was understood correctly by the trial judge or jury. The latter issue is especially important in the innovative appeals that come so often before this court, where there are few if any boundaries, signposts, or rules to guide the deciding judges. In many cases the court is required to engage in *de novo* review. This means the judges must review all elements of the decision below, in some cases retracing the actual footwork of the trial judge, if not actually embarking on entirely new lines of thought, logic and analysis.

In patent infringement and other intellectual property cases most judges and their law clerks have to master an unfamiliar field of science and draw the best conclusions they can from scarce and limited resources. Because judges are assigned to panels randomly and not by specific subject matter expertise, all judges and their law clerks on the Federal Circuit are required to engage in extensive, and fundamental scientific inquiries in every area of science and technology. The practical effect is that each judge with his or her Chambers staff is engaged simultaneously in varied and complicated exercises, as opposed to deciding a series of often less complex, single issue cases, as in other courts of appeals.

The Federal Circuit's need for additional law clerks is based on an increased caseload in highly technical and complex appeals. Having a fourth law clerk would ensure that the judges of the United States Court of Appeals for the Federal Circuit can give the Nation, practitioners and litigants and the Patent and Trademark Office timely and thoughtful deliberation on the many challenging, critical and complex issues that come before the Court.

PART 3

Approximately 25 percent of the specific program requests ($918,000) will fund the following:

—Cooling equipment for the network server room ($350,000);
—A new Internal Controls Analyst position ($71,000);
—Renovations to the Circuit Library ($200,000);
—Enhancements to courtroom computer technology ($255,000); and
—Furniture and equipment for the new positions requested ($42,000).

These items are important to the management and internal operation of the United States Court of Appeals of the Federal Circuit.

Permanent Cooling Equipment.—The Court requests $350,000 to provide permanent cooling equipment for the network server room. The Court's server room was jerry-built out of an internal office space. It was never properly configured, ventilated, wired or equipped. Following several instances of dangerously high temperatures, we took temporary steps to mitigate some of the immediate problems. These funds would enable us to reconfigure and cool the server room properly, thereby saving the life of expensive hardware and equipment and greatly improving the reliability of information technology for the court's judges and staff.

Internal Controls Analyst.—The Court is requesting $71,000 for a new Internal Controls Analyst position which was authorized and encouraged throughout the judiciary by the Judicial Conference. We have already assigned existing staff additional duties to conduct internal audits, inspections and inventories. But having a dedicated, trained professional to perform these responsibilities would fulfill the vision the Judicial Conference contemplates and materially improve the stewardship of the court's property, funds, and internal procedures.

Circuit Library Renovations.—The Court is requesting $200,000 to design and construct renovations to the Circuit Library, which has not been renovated since the courthouse was built in 1965. These modest renovations would improve access to and efficiency in managing the Library collection.

Courtroom Technology Enhancements.—The Court is requesting $255,000 to finance technological enhancements in our third courtroom, consistent with long-standing policy of the Judicial Conference. Such enhancements include digital sound recording equipment to enable uploading the audio portion of oral arguments on the court's website; laptop connectivity equipment and training to bring the courtroom into the 21st century and allow judges and their law clerks and counsel to use personal computers during arguments; under-floor cabling for safety, security and easy access; and video-conferencing infrastructure for remotely conducted oral arguments.

Furniture and Equipment.—The Court is requesting $42,000 for furniture and equipment for the new positions described above: 12 law clerks and an internal controls analyst.

Mr. Chairman, I would be pleased to answer any questions the Committee may have or to meet with the Committee members or staff about our budget request. Thank you.

PREPARED STATEMENT OF JANE A. RESTANI, CHIEF JUDGE, UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee: I would like to once again thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's budget request for fiscal year 2009 is $19,622,000. This represents an overall increase of $2,990,000 or 18 percent over the Court's fiscal year 2008 enacted appropriation of $16,632,000. The primary reason for this increase in the fiscal year 2009 budget request is a substantial increase in GSA rent charges. The total GSA rent estimate for fiscal year 2009 is $7,527,041, which is an increase of $2,336,000 over the fiscal year 2008 rent estimate. To put these charges in perspective, it is important to note that these fiscal year 2009 rent charges represent 78 percent of the Court's total requested increase and 38 percent of the Court's total requested budget. The rent rate increase reflects a 50 percent increase in the shell rate as a result of a new appraisal by GSA. While the shell rate is primarily responsible for the increase in GSA rent charges, those increase charges also include a new expenditure of $803,012 for the amortized cost of the Court's Congressionally-approved security pavilion. The process for the construction of this security pavilion began in fiscal year 2002 when Congress authorized $75,000 for an architectural analysis of the repairs and upgrades needed to ensure the health, security and effective operation of the Court. The results of this analysis eventually led to the construction of the security pavilion that will be completed toward the end of fiscal year 2008.

Despite the substantial increase in rent charges, which is outside of the Court's control, the Court continues, as it has done for the past 13 years, to budget conservatively and request only funds that will provide for mandatory increases in pay, benefits and other inflationary factors, as well as funds for the essential on-going operations and initiatives of the Court. These increases are in line and consistent with the Court's prior average budgetary requests of 4.8 percent. I note also that these modest increases include increases in costs paid to the Federal Protective Service for basic and building-specific security surcharges. The security surcharges provide for the Court's pro-rata share of installing, operating and maintaining systems for the critical and necessary security of the Federal Complex in lower Manhattan.

Through the use of its annual appropriation and the Judiciary Information Technology Fund (JITF), the Court continues to promote and implement the objectives set forth in its Long Range Plan. These objectives promote access to the Court through the effective and efficient delivery of services and information to litigants, the bar, public, judges and staff. As a national court, this access is critical in realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous and timely service, (2) providing independent, consistent, fair and impartial interpretation and application of the customs and international trade laws and (3) fostering improvements in customs and international trade law and practice and improvement in the administration of justice.

The Court continues to aggressively implement its information technology and cyclical maintenance/replacement programs. In fiscal year 2007, the Court: (1) purchased, configured and tested three new replacement servers, two new file servers and one internet server; (2) tested the new 3.1 version of the Court's customized version of the Federal Judiciary's Case Management/Electronic Case Files (CM/ECF) System; (3) cyclically upgraded, replaced and supported desktop computers and printers throughout the Court; (4) upgraded the Court's photo-copiers with new digital copiers with scanning and faxing capabilities; (5) installed the new version of Word Perfect; (6) supported and maintained all technical equipment and software applications; and (7) utilized an Administrative Office contract for professional consulting services for an evaluation of the needs of the Court in the design and implementation of a new video conferencing system. Additionally, in fiscal year 2007, the Court continued its cyclical maintenance program by: (1) refurbishing the finance/property/procurement and the technical development support sections of the Clerk's Office; and (2) refurbishing two case file rooms and the confidential storage room for better space utilization.

In fiscal year 2008, the Court plans to expend funds to: (1) review and subsequently implement the consultant's recommendations, mentioned in the above, for the purchase of a new video conferencing system; (2) install the file and internet servers and replace the Court's voice, fax and domain name servers; (3) replace desktop computer systems and VPN laptops in accordance with the Judiciary's cyclical replacement program; (4) upgrade and support existing software applications; (5) purchase new software applications to ensure the continued operational efficiency of the Court; and (7) support Court equipment by the purchase of yearly maintenance agreements. The Court will also continue to expand its developmental and educational programs for staff in the areas of job-related skills and technology.

In fiscal year 2009, the Court will not only remain committed to using its carryforward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and to support the Court's short-term and long-term information technology needs, but will also continue its commitment to its cyclical replacement and maintenance program for equipment and furniture for the Courthouse. This latter program not only ensures the integrity of equipment and furnishings, but maximizes the use and functionality of the internal space of the courthouse. Additionally, the fiscal year 2009 request includes funds for the support and maintenance of the Court's upgraded security systems. Lastly, the Court will continue its efforts to address the educational needs of the bar and Court staff.

As I have continually stated in previous years, the Court remains committed to maintaining its security systems to ensure the protection of those who work in and visit the Courthouse. The Court is looking forward to the completion of its security pavilion in the third quarter of fiscal year 2008. This pavilion is expected to be fully operational in fiscal year 2009. The Court has worked in partnership with GSA in the design, construction and completion of this entrance pavilion and is most gratified to see that everyone's efforts and hard work will finally be realized.

I would like to again emphasize that the Court will continue to conservatively manage its financial resources through sound fiscal, procurement and personnel practices. As a matter of internal operating principles, the Court routinely has engaged in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference. For over 5 years the Court has only requested funds to maintain current services. The extraordinary increase in the fiscal year 2009 projected rent charges has caused concerns regarding the Court's ability to maintain current services without additional funds to support the rent increase. In an effort to lessen the projected impact of this rent increase, at the end of fiscal year 2007 and continuing into fiscal year 2008, the Court began the initial review process of the fiscal year 2009 rent rate. Several meetings were held with high level regional GSA personnel responsible for the review and implementation of the rent pricing rates. Additionally, the Clerk of Court met with the Administrative Office. In order to proceed with the process and at the suggestion of the Administrative Office, the Court, in fiscal year 2008, will issue a work order for an independent appraisal analysis. Once the new appraisal is completed and reviewed, subsequent meetings will be held with GSA's high level regional and national office personnel in an effort to reduce the high rent increase.

Lastly, I would like to personally extend my deepest thanks and appreciation to Congress for recognizing the needs of the Court by providing, in fiscal years 2007 and 2008, adequate funding to maintain current services. I am confident that Congress, in fiscal year 2009, will provide the needed funds for the increase in rent costs, thereby enabling the Court to continue to operate in a cost effective and efficient manner.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

PREPARED STATEMENT OF HON. BARBARA J. ROTHSTEIN, DIRECTOR, FEDERAL JUDICIAL CENTER

I am Barbara Rothstein. I have been the Center's director since 2003, and a district judge since 1980. I am pleased to submit the Center's 2009 budget request on behalf of the Center's Board, which the Chief Justice chairs, and which approved this request.

First, the Center is grateful for the efforts of Congress to provide in fiscal year 2008 not only full adjustments to its 2007 base (for only the second time in more than a decade) but also $156,000 for three new positions (30 percent of the $504,000 we sought in fiscal 2008 to restore 10 of the 22 Center positions vacated and frozen since 2003 because of budget shortfalls).

Our 2009 request is for $25,759,000, a $1,572,000 (or 6.5 percent) increase over 2008. The increase includes $1,060,000 for standard adjustments to base, $387,000 for four full-time equivalent positions (seven positions for approximately 6 months), and $125,000 for critical education and training programs.

Before providing more detail on this request, let me provide you with a little background on the Center and its activities. I hope with this description to convey to you the important contribution that the Center makes to the effective and efficient functioning of the Federal courts.

THE CENTER'S CONTRIBUTION TO THE COURTS

The Center's mission is to provide objective, well-grounded empirical research and balanced, effective educational programs for the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Examples include examining the impact of the Class Action Fairness Act of 2005 on the resources of the Federal courts; providing information to assist judges in handling capital cases; and developing empirically sound case weights that accurately reflect judicial workload. Not only do projects such as these help judges decide cases efficiently and fairly, they also help the judiciary and Congress make better-informed decisions about policies and procedures affecting the courts.

Center education programs are vital to judges and court staff. For new judges, orientation programs enable them to assume their new responsibilities quickly. Continuing education programs bring judges up to date on topics ranging from case-management techniques to new statutes and case law. (For example, the Center quickly responded to the U.S. Sentencing Commission's decision to retroactively apply changes to the sentencing guidelines on crack cocaine by providing educational programs and other resources to help judges, probation officers, and others deal carefully, efficiently, and fairly with the many issues this raised.)

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs better (for example, integrating new technologies and executing cost-containment strategies). The Center's Professional Education Institute, which provides basic and advanced programs on leadership and management for managers and supervisors at all levels in the courts, is a key component of court staff training.

The Center uses a wide range of tools to deliver education. One reality of the information age is that people can (and expect to) receive information in many different ways. Where once the Center relied almost exclusively on in-person programs, audiotapes, and hard-copy publications to reach judges and court staff, we have expanded into satellite television broadcasting, teleconferencing, and use of the Internet and the courts' intranet, and, more recently, web-conferencing and streaming video. All these delivery means are needed to meet the diverse needs of a diverse population of judges, managers, and staff.

The importance of the Center's educational programs is reflected in their use by the courts. All Center training is voluntary; large numbers of judges and court staff choose to participate in Center programs and use its services because they know the Center's products will help them do their jobs better. In 2007, over 9,000 employees of the courts (including over 2,000 judges) attended Center programs in person—over half did so in their own districts. Over 1,000 court staff participated in Center

video, audio, and web conferences, and thousands of judges and court staff watched Center television programs, accessed resources and downloaded materials from the Center's intranet site, and used Center publications.

THE CENTER HAS MANAGED ITS APPROPRIATION RESPONSIBLY

Understanding the need for fiscal responsibility, the Center has made careful use of its appropriation each year. As I noted earlier, we use a wide variety of cost-effective delivery tools to provide education and information to judges and staff efficiently. The various delivery tools we use have enabled us to reach a larger and larger audience for less money than we could with only one or two of these media. But new technology also requires a highly professional staff with diverse skills in order to take full advantage of these tools and to identify and implement newer technologies as they emerge.

In-person programs remain a vital part of our education efforts. Here we economize in several ways. Most in-person staff training (and some judge education) is done by bringing faculty to the courts for local training. Most programs to which participants must travel are conducted in hotels in large cities where we can negotiate reasonable rates and take advantage of competitive airfares. We conduct smaller seminars in collaboration with several outstanding law schools, enabling us to avoid faculty and overhead costs.

We stretch our appropriation by working closely with our sister agencies, the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission. We regularly consult with them to avoid duplicative efforts, and we often provide them an opportunity to convey their information to the courts at Center-sponsored programs.

THE CENTER'S FISCAL YEAR 2009 REQUEST

Our request for 2009 is modest—standard adjustments to our 2008 base, $387,000 to enable us to fill the seven positions sought but not funded in our fiscal year 2008 request, and $125,000 for programs that are needed but which we cannot currently afford without cutting equally important programs elsewhere. The seven positions will return the Center to approximately its fiscal year 2005 staffing level, but that level will still be more than 10 percent below the number of staff the Center had as recently as 2003, and over 20 percent below the number of staff employed by the Center in the early 90s. With these resources we can continue to help the courts prepare for and meet the many substantive, procedural, and operational challenges they face. The additional program funds would provide expanded programming for judges on sentencing, ethics, and case management (including the use of information technology). These additional funds would also provide programs for attorneys in the courts; the Center has not kept pace with the growing educational needs of these attorneys. The requested amounts represent a total increase of only 6.5 percent over the Center's fiscal year 2008 level. I ask you to please find the resources to fund them in full.

Thank you for your careful consideration of our request. I would be pleased to respond to any questions you may have.

PREPARED STATEMENT OF THE UNITED STATES SENTENCING COMMISSION

Chairman Durbin, Ranking Member Brownback, and members of the subcommittee, the United States Sentencing Commission thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2009. The Commission's statutory mission, as set forth in the Sentencing Reform Act of 1984, continues to be both reaffirmed and significantly impacted by recent United States Supreme Court decisions regarding Federal sentencing policy. Full funding of the Commission's fiscal year 2009 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The Commission is requesting $16,257,000 for fiscal year 2009, representing a 5 percent increase over the fiscal year 2008 appropriation of $15,477,000. The Commission recognizes that it must use its allotted resources carefully and that Congress expects the same. The Commission accordingly has tailored its fiscal year 2009 request narrowly and is seeking a limited increase over its fiscal year 2008 appropriation to account for inflationary increases and certain adjustments for personnel costs.

JUSTIFICATION FOR THE COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the Commission include, but are not limited to: (1) developing sentencing guidelines to be determined, calculated, and considered in Federal criminal cases; (2) collecting, analyzing, and reporting Federal sentencing statistics and trends; (3) conducting research on sentencing issues in its capacity as the clearinghouse of Federal sentencing data; and (4) providing training on sentencing issues to Federal judges, probation officers, law clerks, staff attorneys, defense attorneys, prosecutors, and others.

These statutory duties and the continuing importance of the sentencing guidelines have repeatedly been reaffirmed by recent Supreme Court decisions beginning with *United States* v. *Booker*.[1] In *Booker*, the Supreme Court reemphasized the Commission's continuing role with regard to (writing Guidelines, collecting information about district court sentencing decisions, undertaking research, and revising the Guidelines accordingly."[2] In *Rita* v. *United States*,[3] the Supreme Court reinforced the role of the Commission and the importance of the guidelines in holding that a court of appeals may apply a presumption of reasonableness to a sentence imposed within the properly calculated sentencing guideline range. The Court noted that ([t]he Commission's work is ongoing. The statutes and the Guidelines themselves foresee a continuous evolution helped by the sentencing courts and courts of appeals in that process.[4] In *Gall* v. *United States*,[5] the Court reemphasized that "([a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark" in determining an appropriate sentence.[6]

While reaffirming the ongoing nature of the Commission's work, these decisions also have had a significant impact on that work. Consistent with *Booker* and its progeny, the Commission has continued its core mission to review and revise the guidelines, taking into account 18 U.S.C. § 3553(a) and other congressional statutes and directives and in response to information it receives from sentencing courts, Congress, the Executive Branch, Federal defenders, and others. The Commission also has increased its efforts to provide training on Federal sentencing issues, including application of the guidelines, to Federal judges, probation officers, law clerks, staff attorneys, prosecutors, defense attorneys, and others.

Furthermore, in response to these Supreme Court cases, the Commission has continued to refine its data collection, analysis, and reporting efforts to provide real-time data about Federal district court sentencing practices and trends. The Commission must continue to disseminate sentencing information in real-time and in a thorough manner so that Congress and others can be fully informed and advised on sentencing policy in the wake of the *Booker* line of cases. In addition, the Commission must continue to monitor appellate case law applying these cases, requiring the Commission to further refine its appellate court database.

Despite the impact of these cases, the Commission is not requesting program increases for fiscal year 2009. The Commission has worked diligently over the past several years to maximize its resources overall and appreciates the support and funding it has received from Congress.

Sentencing Policy Development and Guideline Promulgation

As part of its statutory duty to develop sentencing guidelines to be determined, calculated, and considered in Federal criminal cases, the Commission promulgated a number of guideline amendments during the amendment cycle ending on May 1, 2007. These amendments, which absent congressional action to the contrary became effective on November 1, 2007, related to several substantive areas of the criminal law, including transportation, terrorism, intellectual property, and drug offenses. As part of this work, the Commission updated its extensive 2002 report on Federal cocaine sentencing and amended the guidelines prescribing sentences for crack cocaine offenses, keeping the guideline penalties within the statutorily-prescribed mandatory minimum sentences. The Commission received voluminous public comment on this issue, including whether these changes should be applied retroactively. It held multiple public hearings on the amendment and the issue of retroactivity, receiving testimony from a cross-section of witnesses. Based on this testimony and its own research, the Commission decided to give retroactive effect to its amendment for

[1] 543 U.S. 220 (2005).
[2] 543 U.S. at 264.
[3] 127 S. Ct. 2456 (2007).
[4] *Id*. at 2464.
[5] 128 S. Ct. 586 (2007).
[6] *Id*. at 596.

crack cocaine offenses. It now is working closely with the Federal criminal justice community to ensure its efficient application.

For the amendment cycle ending May 1, 2008, the Commission is considering several guideline amendments in response to recent congressional action. The Commission has proposed amendments in response to the Animal Fighting Prohibition Enforcement Act of 2007, the Honest Leadership and Open Government Act of 2007, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, and the Court Security Improvement Act of 2007. The Commission also is considering amendments in the areas of immigration offenses, drug offenses, and criminal history. These proposed amendments respond to input received from the criminal justice community and reflect the Commission's ongoing work to refine the guidelines in accordance with its statutory obligations.

Consistent with the requirements of the Sentencing Reform Act of 1984, the Commission engages in a collaborative process for sentencing policy development and guideline promulgation. That process continues to include significant outreach to, and input from, representatives of the criminal justice community, as well as the review of pertinent literature, data, and case law. For example, the Commission recently held a public briefing session on disaster fraud offenses and the illegal use of human growth hormone. During this briefing session, the Commission received testimony from the Department of Justice, the Federal Defenders Service, the Department of Housing and Urban Development, the American Red Cross, and the Food and Drug Administration.

Collecting, Analyzing and Reporting Sentencing Data

In fulfillment of its statutory duties related to collecting, analyzing, and reporting Federal sentencing statistics and trends, the Commission collects documentation from the district courts on over 70,000 Federal felony and class A misdemeanor cases annually.[7] From this documentation, the Commission extracts, analyzes, and reports information on national sentencing trends and practices. As with other aspects of the Commission's statutory mission, data collection, analyzing, and reporting efforts continue to be impacted by the Supreme Court's recent sentencing-related decisions.

Immediately after the Supreme Court's 2004 decision in *Blakely* v. *Washington*,[8] the Commission recognized that one of the most critical functions it could perform was reporting timely and accurate sentencing data. The Commission refined its data collection, analysis, and reporting requirements to such a degree that it was able to produce relevant information beyond that which it promulgated in its annual reports and sourcebooks. By the time the Supreme Court issued its *Booker* decision in January 2005, the Commission was able to provide real-time data about national sentencing trends and practices.

The Commission further refined its processes throughout fiscal years 2006 and 2007 to maximize the information it made available to the criminal justice community. The Commission now provides detailed quarterly national sentencing data similar to the format and types of data produced in its year-end annual reports. In addition, the Commission has begun to provide real-time data on the impact on Federal sentencing practices of the Supreme Court's recent decisions in *Rita*, *Gall*, and *Kimbrough* v. *United States*.[9] The Commission also has expedited publication of its year-end annual reports, which are now released in February of each year. For fiscal year 2007, the Annual Report and Sourcebook contained information on 72,865 Federal cases, which represents approximately 24,000 more cases than the Commission processed a decade ago. The information contained in these reports and other analyses conducted by the Commission are used by, among others, Congress, the judiciary, the Department of Justice, defense practitioners, and academics.

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[7] *See* 28 U.S.C. § 994(w), which requires the chief judge of each district court, within 30 days of entry of judgment, to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

[8] 542 U.S. 296 (2004). *Blakely* was a precursor to the *Booker* decision, which applied to a State guideline sentencing scheme. After the *Blakely* decision, several Federal courts questioned whether the Federal sentencing guideline system was still viable and Federal sentencing practices became uncertain. The Commission's data collection and analysis efforts assisted the criminal justice community in evaluating the impact of *Blakely*, and later *Booker*, on the Federal system.

[9] 128 S. Ct.558 (2007).

Information Technology Issues Associated with Data Collection, Analysis and Reporting

Over the past 3 fiscal years, the Commission has apprised Congress of its development of an electronic document submission system that enables courts to electronically submit the five statutorily required sentencing documents directly to the Commission. This system is now used by 91 of the 94 judicial districts, an increase from 80 districts in fiscal year 2007 and 64 districts in fiscal year 2006. The electronic document submission system has greatly alleviated the Courts' need to spend judicial resources on copying, bundling, and mailing hard copies to the Commission.

During fiscal years 2008 and 2009, the Commission intends to continue to make technological advancements related to data collection, analysis, and reporting. For example, working with the courts, the Commission has begun to advance the evolution of its electronic submission system to a web-based system with the ability to accept both the statutorily required sentencing documents and data fields from the courts. Specific projects include the planning, coordination, and implementation of a pilot project for the expanded use of this web-based system.

Increased Requests for Commission Work Product from Congress

In addition to providing quarterly and annual data reports on national sentencing practices, the Commission continues to experience increased requests for particularized data analysis from Congress. The Commission is statutorily required to assist Congress in assessing the impact proposed criminal legislation will have on the Federal prison population. These assessments are often complex, time-sensitive, and require highly specialized Commission resources. The Commission also has experienced an increase in requests for information from Congress on issues such as drugs, gangs, fraud, immigration, and sex offenses. The Commission increasingly is providing data to assist Congress during oversight and legislative hearings on proposed changes to substantive areas of the criminal law. Informational requests from the Congressional Research Service have also increased. The Commission anticipates that congressional requests will continue to increase throughout fiscal year 2009 and looks forward to fulfilling them in a timely and thorough manner.

Conducting Research

The Sentencing Reform Act of 1984 directed the Commission to establish a research agenda as part of its role as the clearinghouse on Federal sentencing statistics and policy and to assist the courts, Congress, and the Executive Branch in the development, maintenance, and coordination of sound sentencing policies. As part of this statutory mission, the Commission issued its fourth comprehensive report on Federal cocaine sentencing policy in May 2007. It also released an analysis on the impact of the amendment to the guidelines for crack cocaine offenses if it were given retroactive effect. The Commission's research agenda in fiscal year 2008 includes reports associated with its policy work and other projects of interest to the criminal justice community. One of these projects is an examination of alternatives to incarceration, which will include a 2-day symposium featuring leading experts in the field.

Training and Outreach

The Sentencing Reform Act of 1984 also directed the Commission to provide specialized sentencing training and guidance to the criminal justice community. In fulfillment of this statutory duty, the Commission provides training, technical assistance, and other educational programs to Federal judges, probation officers, law clerks, staff attorneys, prosecutors, and defense attorneys throughout the year. The Commission's training and outreach efforts have expanded in each of the past four years, particularly in response to the Supreme Court's recent sentencing-related decisions and to the Commission's annual promulgation of guideline amendments. In fiscal years 2007 and 2008, the Commission provided training in every Federal judicial circuit and a majority of the districts. It also participated in numerous symposia, conferences, and workshops. In May 2008 in Orlando, Florida, the Commission will co-host its annual national training program at which several hundred participants will receive Federal sentencing guideline training. The Commission expects that the need to provide specialized training on Federal sentencing issues will continue to increase throughout fiscal year 2009.

SUMMARY

The Commission remains uniquely positioned to assist all three branches of Government in ensuring sound and just Federal sentencing policy. Located in the judicial branch and composed of Federal judges, individuals with varied experience in the Federal criminal justice community, and ex-officio representatives of the Execu-

tive Branch, the Commission is an expert, bipartisan body that works collaboratively with Congress. It therefore sits at the crossroads where all three branches of Government intersect to determine Federal sentencing policy.

The Commission appreciates the funding it has received from Congress to meet its ever-increasing needs. Full funding of the Commission's fiscal year 2009 request will ensure that the Commission continues to fulfill its statutory mission to develop Federal sentencing guidelines, collect, analyze and report Federal sentencing statistics and trends, conduct research on sentencing issues, and provide training to the criminal justice community. The Commission respectfully asks that Congress fully support the Commission's fiscal year 2009 appropriation request of $16,257,000 so that it can continue its statutory role as a leader in Federal sentencing policy.

Senator DURBIN. Mr. Duff, do you have a statement that you would like to add to the record?

STATEMENT OF JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. DUFF. Yes, Mr. Chairman. Thank you very much for inviting us to be here today. I am very pleased to present the budget request for the Administrative Office of the United States Courts (AO). I will make some brief remarks and ask that my written testimony be included in the record.

Senator DURBIN. Without objection.

Mr. DUFF. Thank you.

I join Judge Gibbons in thanking you for the additional funding provided the judiciary in the 2008 appropriations bill during such a tight funding environment. We sincerely appreciate your recognizing the impact enhanced border enforcement will have on the judiciary by providing emergency appropriations to address the additional workload. This funding will provide some staffing increases for courts whose workload is heavily impacted by immigration and other law enforcement initiatives.

This is my second appearance before the subcommittee. I have now had the opportunity to work with this subcommittee and its staff through one full appropriations cycle and have appreciated being able to work closely with you as our requirements changed and your allocation was reduced during conference. I want to take particular note, Chairman Durbin, of the good working relationship that we have with the subcommittee and its staff. Just this week, for example, in our executive committee meeting at the Judicial Conference, we singled out our relationship with the subcommittee as an example of how we should interact with Congress. It is exemplary, and we very much appreciate the dialogue and the subcommittee's openness and willingness to talk with us. We hope to emulate it across the board in all of our dealings with Congress. It is something we are proud of and very much appreciate.

ROLE OF THE ADMINISTRATIVE OFFICE

I will talk very briefly on a couple of items here. First, by way of background—and you may be familiar with this, but just briefly for the record—the AO was created by Congress in 1939 to assist Federal courts in fulfilling the mission to provide equal justice under the law. It is a unique entity in Government. It does not operate as the headquarters for the courts. Court operations, as you know, are decentralized, although the AO provides administrative, legal, financial, management, program, security, information technology, and other support services to all the Federal courts.

The AO also provides support staff and staff counsel to the Judicial Conference of the United States and its 25 committees and it helps implement Judicial Conference policies, as well as applicable Federal statutes and regulations. The AO has evolved over the years to meet the changing needs of the judicial branch. Service to the courts, however, will always remain our core function and mission.

REVIEW OF THE ADMINISTRATIVE OFFICE

Last year I reported to you that I was assembling a small advisory group of judges and court executives to assist me and our new Deputy Director, Jill Sayenga, in a review of the organization and mission of the AO. The ad hoc advisory group confirmed that the AO is an organization of dedicated service-oriented professionals, but it also identified some areas where the AO's performance or ways of conducting business could be improved. Teams of AO managers have been assembled to plan and implement the recommendations.

My goal is to ensure that the AO is the best and most efficient service organization in the Government. In supporting the courts, the AO frequently finds itself responding to new developments, such as the *Booker* and *Fanfan* Supreme Court decisions, or implementing the new bankruptcy legislation. And to do so, we work with court leaders to develop plans and processes for the judiciary to respond to new challenges.

CURRENT ISSUES AT THE ADMINISTRATIVE OFFICE

Two developments on which we are currently responding are the impact of enhanced immigration enforcement on the courts, and implementation of the pilot program that you authorized last year under which the U.S. Marshals Service assumes responsibility from the Federal Protective Service for perimeter security at several designated courthouses.

I will mention very briefly two other items.

Last year I spoke about the efforts to improve our working relationship with GSA. I reported that substantial progress was being made and that we were working on significant changes in how GSA determines or calculates courthouse rents. Today, I am very pleased to report that we have successfully concluded the effort on determining how GSA calculates rent.

On February 19, I signed a memorandum of agreement, which was cosigned by GSA's Public Buildings Service Commissioner, that changes the way rent will be calculated for all federally owned courthouses to be delivered in the future, and it also applies to 32 of our existing courthouses. Both the judiciary and GSA will benefit from knowing with certainty how much rent the judiciary has to pay and how much rent GSA will receive. Judiciary and GSA staff time and resources for contractor support to conduct and validate market appraisals will no longer be used.

Next, I would also like respectfully to request that you consider providing assistance in solving our two major courthouse construction problems in San Diego and Los Angeles where market conditions and delays have increased the cost of these projects.

FISCAL YEAR 2009 BUDGET REQUEST

And last, I would note that the fiscal year 2009 appropriations request for the Administrative Office of the U.S. Courts is $82 million. This is an increase of $5.9 million, or 7.8 percent. Although the increase we are seeking may appear significant, overall it represents a no-growth, current-services budget. The requested increase is exclusively to cover base adjustments to maintain current services. We are requesting no program increases.

PREPARED STATEMENT

Chairman Durbin, I recognize that fiscal year 2009 will be another difficult year for you and your colleagues as you struggle to meet funding needs of the agencies and programs under your review. I look forward to working with you and your staff on meeting the needs of the Judiciary.

Senator DURBIN. Thanks, Mr. Duff.

Mr. DUFF. Thank you.

[The statement follows:]

PREPARED STATEMENT OF JAMES C. DUFF

INTRODUCTION

Chairman Durbin, Senator Brownback, and members of the subcommittee, I am pleased to appear before you this morning to present the fiscal year 2009 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.

First, I would like to join Judge Gibbons in thanking you and your Committee for the support you provided the Judiciary in the fiscal year 2008 appropriations bill. In addition to the regular funding, we deeply appreciate your recognizing the impact enhanced border enforcement will have on the Judiciary by providing emergency appropriations to address the additional workload. In the aggregate, the funding will allow the Judiciary to provide some staffing increases in courts whose workload is heavily impacted by immigration and other law enforcement initiatives.

This is my second appearance before the Financial Services and General Government subcommittee and I have now had the opportunity to work with this subcommittee and its staff through one full appropriations cycle. We recognize the very tight fiscal constraints in which you operate and appreciated being able to work closely with your staff throughout the process as our requirements changed and your allocation was reduced. I look forward to a continued productive relationship with your very able staff as we move through the year. I want to answer any questions you might have, and to describe the important needs of the Federal Judiciary.

ROLE OF THE ADMINISTRATIVE OFFICE

In July 2006, I accepted the appointment of Chief Justice Roberts to become only the 7th Director of the Administrative Office of the United States Courts in its 69-year history. Created by Congress in 1939 to assist the Federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in Government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO does not operate as a headquarters for the courts. The Federal court system is decentralized, although the AO provides administrative, audit, human resources, legal, financial, management, program, security, information technology and other support services to all Federal courts. It provides support and staff counsel to the policy-making body of the Judiciary, the Judicial Conference of the United States, and its 25 committees, and it helps implement Judicial Conference policies as well as applicable Federal statutes and regulations. The AO carries out a comprehensive financial audit program to ensure the Judiciary expends its resources properly. It also coordinates Judiciary-wide efforts to improve communications, information technology, program leadership, and administration of the courts, and is leading the effort to contain

costs throughout the Judiciary. Our administrators, auditors, accountants, systems engineers, personnel specialists, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the Federal courts nationwide. The AO staff also respond to Congressional inquiries, provide information on pending legislation, and prepare Congressionally mandated reports.

ADMINISTRATIVE OFFICE INTERNAL REVIEW

Last year I reported to you that I was assembling a small advisory group of judges and court executives to assist me and our Deputy Director, Jill Sayenga, in a review of the organization and mission of the AO. I wanted to ensure that the structure and services provided by the AO are appropriate and cost-effective, and that they address the changing needs of the courts. We examined our core mission of service to the courts as defined by statute and directives from the Judicial Conference to determine if internal adjustments were needed to improve efficiency and responsiveness.

I am pleased to tell you the ad hoc advisory group confirmed that the AO is an organization of dedicated, service-oriented, capable professionals, but it did identify some areas where the AO's performance or ways of conducting business could be improved. The group provided practical and achievable recommendations on how to improve both the services of the AO to, and our working relationship with, the courts. To that end, teams of AO managers have been assembled to plan and implement the recommendations. Among other things, we will be reviewing internal operations, the deployment of our workforce, the best ways to obtain court input and advice, and improvements in communications with the courts and in working procedures. My goal is to ensure that the AO is the best service organization in the Government.

Although the internal review was undertaken primarily to determine how well the AO currently fulfills its responsibilities, the ad hoc advisory group raised questions about the agency's continuing ability to deliver critical services, as well as its capacity to adapt to our court customers' future needs. Areas of concern include future budgetary constraints, the anticipated retirements of highly experienced and knowledgeable employees in senior management and technical positions, growing numbers of staff vacancies in critical areas, AO competitiveness in the labor market, the changing nature of work and required competencies, and the impact of change on employee morale.

After reviewing carefully our operations for the past year-and-a-half, I am convinced that we require the current services level of staff and funding we request for fiscal year 2009 to provide adequate support to the courts. The services provided by the AO are critical to the effective operation of our Federal courts, and I hope you will continue to provide the resources we require.

ADMINISTRATIVE OFFICE CHALLENGES

As I indicated when I testified last year, when I became Director in July 2006, I restricted recruitment actions for filling vacant positions to give me time to evaluate the organization, its mission, and priorities. Any exceptions for external recruitment were scrutinized carefully by an executive review committee and required my approval. I am pleased to report that, having completed this review, the hiring freeze has been partially lifted and critical vacancies are being filled.

In the interim, with significant additional effort on the part of our existing staff, and at times with great difficulty, the AO continues to perform vital human resources and financial functions, implements the policymaking efforts of the Judicial Conference, monitors program performance and use of resources, develops and supports automated systems and technologies, collects and analyzes court workload statistics, coordinates construction and management of court facilities, defines court resource needs through caseload forecasts and work measurement analyses, monitors the U.S. Marshals Service's (USMS) implementation of the judicial facility security program, provides program leadership and support for court unit executives, develops and conducts education and training programs, and performs cyclical court audits and other financial and system audits to ensure integrity.

In addition to striving to perform its fundamental responsibilities outlined above in the most efficient and effective matter, the AO must look beyond the immediate day-to-day needs of the courts. It is our responsibility to anticipate and plan for changes in workload, workforce demographics, legislative mandates and other areas so that we can serve the courts effectively in the years ahead.

PLANNING FOR THE FUTURE

The AO frequently finds itself in uncharted waters. Whether it is responding to the *Booker* and *Fanfan* Supreme Court decisions or implementing the Bankruptcy Abuse Prevention and Consumer Protection Act, we are working with court leaders to develop plans and processes for the Judiciary to respond to new challenges. I highlight three of the initiatives on which we are currently working—responding to enhanced immigration enforcement, preparing to implement the retroactive application of the crack cocaine sentencing amendment, and implementing a pilot project you authorized last year under which the USMS assumes responsibility from the Federal Protective Service (FPS) for perimeter security at several designated courthouses. Judge Gibbons' testimony addresses the policy issues and impact on the Judiciary of these three initiatives. I would like to talk about the operational concerns and what the Administrative Office is doing to ensure the courts are prepared to support these efforts.

Enhanced Immigration Enforcement

Increased border enforcement is a priority of this Congress and the administration. We are grateful for your recognition that the Judiciary is integral to this effort by providing significant resources to the courts in 2007 and 2008 for us to respond to the resulting apprehensions and prosecutions. In addition to having the increased funding you provided, the Judiciary must plan and coordinate the management of the new workload effectively, particularly as Operation Streamline is implemented in more locations along the Southwest border. To that end, Administrative Office staff participated in a conference of top law enforcement officials from Southwest border districts and continue to maintain contact with executive branch personnel to ensure we are aware of and can respond to their priorities. Further, we have established a task force within the AO to facilitate the Judiciary's response to enhanced immigration enforcement and work with the Southwest border courts.

In conversations with judges, court managers, and Federal defenders, particularly in the Southwest border districts, but also in districts throughout the country, we are finding that limitations beyond funding can make it difficult for courts to respond to the increased workload. Lack of space to hold court proceedings and to detain those apprehended, rising caseloads of Federal defenders, finding enough panel attorneys willing to accept these cases at the current non-capital hourly rate of $100, locating sufficient numbers of qualified interpreters, and hiring and retaining probation and pretrial services officers in the difficult work environment that exists along the Southwest border are all challenges that the AO, in coordination with the courts, is trying to address. These are difficult problems that will require creative and innovative solutions.

AO staff, in collaboration with court personnel, are systematically developing an inventory of areas where we do not have all of the resources to address the existing and potential new workload. Initially we are focusing on the Southwest border districts, but these issues are not necessarily limited to the Southwest border. Many districts throughout the country are affected by enhanced immigration efforts, resulting in increased numbers of legal and illegal alien defendants in locations such as the Middle District of North Carolina, the Western District of Arkansas, Nebraska, Idaho, the Northern District of Georgia, Oregon, Colorado, and the Southern District of Iowa. This leads, for example, to a need for more interpreters in some districts where the availability is quite limited and the demand and supply have not existed previously. To resolve these issues, we will have to look beyond the traditional ways we have addressed these needs and develop innovative, creative solutions.

Perimeter Security Pilot Program

Another new endeavor for the AO is implementation of a pilot project whereby the USMS will assume FPS perimeter security responsibilities in selected court facilities. As Judge Gibbons stated in her testimony, we are very grateful that you have given us the opportunity to pursue this project and to ensure that the Judiciary has comprehensive and effective security in place.

We are particularly troubled by the February 8, 2008, Government Accountability Office's (GAO) Preliminary Observations on the Federal Protective Service's Efforts to Protect Federal Property which found that FPS has not always maintained the security countermeasures and equipment it was responsible for, such as perimeter cameras, which may expose Federal facilities to a greater risk of crime or terrorist attack. This GAO report verifies the situation that Judge Gibbons described in testimony before this subcommittee last spring regarding perimeter security equipment for which FPS was responsible, but which was not maintained, fixed or replaced, despite FPS being paid by the Judiciary for that service. Please be assured that

courthouses do not have these problems because of the security provided the Judiciary by the USMS. It is specifically for the reasons identified in the GAO report, however, as well as the need to have one entity responsible for security, that we raised concerns about FPS perimeter security last year. We are grateful that you responded by authorizing the pilot project. The test-site courts will be provided with a consistent level of perimeter security as is the case in the interior of courthouses, and will allow those courts to rely on the Marshals Service as its single provider of security services, rather than FPS.

I would point out that GAO identified funding shortfalls as a primary cause of the FPS security deficiencies. This concerns us because, as you know, FPS is funded fully from the fees it charges other Government agencies for its security services. While we have suggested on several occasions that FPS receive a direct appropriation at a funding level Congress deems appropriate to secure Federal buildings, this proposal has not been pursued. Consequently, under the current funding scheme, any budgetary shortfall is borne by all Federal agencies in the form of increased fees, thus increasing the Judiciary's funding requirements, as well as those of the Executive Branch agencies under your jurisdiction.

With regard to the pilot project, I assure you that AO staff are involved in every aspect of implementation and will be monitoring the project carefully. We have been on site at every pilot location to assess the level of security provided by FPS and to participate in determining the appropriate level of security to be provided by USMS. We are cognizant of the need to control costs during this pilot and for the future if it is determined that nationwide implementation is appropriate.

Crack Cocaine Sentencing Retroactivity

The last new area I would like to address is implementation of the retroactive application of the Federal sentencing guidelines amendment for crack cocaine offenses. This effort is similar to our response to enhanced immigration enforcement in that it involves many components of the Judiciary as well as Executive Branch entities, as Judge Gibbons mentioned in her testimony. The AO's role in this endeavor began in November, when we hosted a contingency planning meeting prior to the decision of the Sentencing Commission to apply the amendment retroactively. We invited chief probation officers from the districts with the largest number of crack cocaine cases to meet at the AO, and we invited officials of the Sentencing Commission, the Department of Justice, and the Bureau of Prisons to join us. The discussion centered around identifying offenders in prison who may be eligible for immediate release, and planning for the successful reentry into the community of those qualified for release. At the planning meeting, two chief probation officers volunteered to host large conferences in Charlotte, North Carolina, and St. Louis, Missouri, that would gather judges, probation officers, prosecutors, and Federal defenders from districts with a significant number of crack cocaine cases, and provide a forum to develop practical plans for dealing with the workload at the district level. The 2-day conferences included presentations by the Sentencing Commission, the Bureau of Prisons, the USMS, and also panel discussions with judges, prosecutors, and defenders. There was widespread agreement at the conferences that the courts involved are capable of meeting the challenges posed by the additional workload. To ensure that the valuable information discussed during these conferences was available to all judges and court staff, AO staff recorded the sessions and posted the video on the Judiciary's intranet site.

In addition to the conferences, AO staff have worked to make implementation of the amendment easier for all of the courts. In coordination with the Sentencing Commission and the Judicial Conference's Committee on Criminal Law, AO staff developed a model order that can be used by the courts when resentencing inmates. This one-page form captures all of the information needed by the Commission and the Bureau of Prisons, and will allow judges and court staff to process the orders quickly. Also, databases used in the clerks offices, probation and pretrial services offices, and Federal public defenders offices to capture statistics and workload data related to crack cocaine resentencings have been updated. Additionally, AO staff have disseminated important information about Bureau of Prisons procedures to the courts. I am pleased to report that all of these efforts were in place prior to the March 3, 2008, effective date.

PARTNERSHIP WITH THE GENERAL SERVICES ADMINISTRATION

Last year when I testified before you I talked about my efforts to improve our working relationship with the General Services Administration (GSA). At that time I reported that substantial progress was being made and that we were working on significant changes in how GSA determines or calculates courthouse rents. Today, I am pleased to report that we have successfully concluded that effort. On February

19, 2008, I signed a Memorandum of Agreement (MOA), co-signed by the GSA Public Buildings Service Commissioner, that changes the way rent will be calculated for all federally owned courthouses to be delivered in the future. This new methodology will also be applied to a limited number of courthouses that the Judiciary already occupies.

The conventional approach that had been used to determine rent for most of our buildings, as well as those building occupied by other Federal tenants of GSA space, is based on appraisals of commercial space in the same rental market as the federally-owned building. Every 5 years a new appraisal of the market was done and rental rates paid to GSA were adjusted accordingly. I would note that using this former "fair market value" method, in fiscal year 2009, the rent for the Court of International Trade, a GSA-owned building in Manhattan that is over 40 years old, will increase by $1.5 million or 30 percent, based on the 5-year cyclical reappraisal done by GSA.

The MOA outlines a new process for determining rental rates based on a return on investment (ROI) methodology. Under the MOA, the rent will be fixed for the first 20 years of occupancy and will be set to return to GSA approximately 7 percent per year of its capital costs; operating costs will be adjusted annually to reflect GSA's actual operating expenses.

We are pleased that this MOA has been signed for several reasons. First and foremost, it ushers in a new era of collaboration and cooperation between the Judiciary and GSA and demonstrates that by working together, we can resolve problems in a way that is mutually beneficial to both parties. Second, it provides the Judiciary with certainty about the amount of rent it will pay for a 20-year time period, rather than being subject to changes every 5 years as a result of changing commercial market conditions. Third, the amount of rent will be based directly on the capital resources the Judiciary consumes, i.e., how much it costs to construct the building, rather than on periodic assessments of market rents in nearby commercial office buildings. Finally, with GSA agreeing to an "open-book" accounting of costs, the Judiciary will not have to hire consultants and expend considerable staff time reviewing appraisals based on subjective opinions of market value.

I have just outlined the many benefits that the Judiciary will enjoy under this MOA. Because this subcommittee also has jurisdiction over the General Services Administration, I assure you that GSA will also benefit from the provisions of the MOA. Specifically, GSA will have a guaranteed return on investment at a set rate with no market risk or vacancy risk. As mentioned above, under appraisal pricing, every 5 years the rate is reset. These reappraisals result in rent decreases as well as increases, so should market conditions be lower than the previous appraisal, GSA would get less rent. Also, under the MOA, the Judiciary is assuming the vacancy risk in the ROI buildings. That is, the Judiciary will pay the same rent over the 20-year time period even if space becomes vacant in the building. Consequently, GSA will not lose rental income until such time that it could backfill the space with another tenant. Finally, GSA will no longer have to respond to challenges to the fairness and validity of the rent determination process, which has led to criticism, tension, and unexpected reductions in the Federal Buildings Fund when GSA refunded overcharges to the Judiciary.

COURTHOUSE CONSTRUCTION

I next will discuss another facility-related issue—the status of our courthouse construction needs. We appreciated your willingness to fund new courthouse construction projects requested by the Judicial Conference in fiscal year 2008 even though the administration did not include them in the President's budget. We find ourselves in a similar situation this year with the President's budget only requesting the additional funds needed for the San Diego courthouse. Despite reductions in the scope of the San Diego project, costs have increased significantly over the original GSA projections because of changing market conditions and the construction boom in California. The project has been delayed several years and is critically needed in this California Southwest border district because the existing courthouse is out of space.

As you know, we have another courthouse problem in Los Angeles. California (Central) is the largest district in the country and current facilities are seriously inadequate. Because of market conditions and delays, the cost of the Los Angeles project far exceeds GSA's original estimates. Despite the sizable reductions in scope made by the court, the cost of this project continues to grow and will only get more expensive as time passes. The AO, the court, and GSA have been working together to find a solution. While we recognize how costly this project is, especially in a time of constrained resources for non-security discretionary programs, we believe the

final project design must address long-term needs and provide an environment in which the judicial process can function safely and effectively. We also want to ensure that when alternatives are considered, all costs associated with the options are included in the analysis. Consequently, we are pleased that GAO has been asked to conduct a review of this project and trust that it will address all aspects of the issue. We also look forward to collaborating with GSA on the report this subcommittee asked it to provide and trust that our views will be reflected fully. I have stated on numerous occasions that the situation in Los Angeles is an extraordinary problem that may ultimately warrant an extraordinary solution.

Finally, we respectfully request that you consider the new courthouse construction projects included on the Judicial Conference approved Five-Year Courthouse Project Plan for fiscal years 2009–2013, a copy of which is attached to this Statement. As I mentioned, none of these projects is included in the President's 2009 budget request, yet they have been on the Five Year Plan for a number of years. Most of the projects have sites, have been or soon will be designed, and are awaiting construction funding. Every year a project is not funded its cost increases by about 10 percent based solely on inflation. We appreciate your consideration of these needs.

ADMINISTRATIVE OFFICE FISCAL YEAR 2009 BUDGET REQUEST

Last I will address the fiscal year 2009 appropriations request for the Administrative Office of the United States Courts which is $81,959,000. This represents an increase of $5,923,000, or 7.8 percent, over fiscal year 2008 enacted appropriations. Although the percentage increase in appropriations we are seeking may appear significant, overall it represents a no-growth, current services budget request. I note this request funds 6 percent fewer staff than were funded in 1995 even though court staffing has increased almost 14 percent over the same time period.

The AO's appropriation comprises less than 2 percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. Courts. In addition to the appropriation provided by this Committee, as approved by the Judicial Conference and the Congress, the AO receives non-appropriated funds from sources such as fee collections and carryover balances to offset appropriation requirements. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security programs, and defender services.

The requested increase of $5.9 million is exclusively to cover base adjustments to maintain current services; the AO requests no program increases. Over half of the increase is to fund the proposed fiscal year 2009 pay adjustment and to annualize the fiscal year 2008 pay adjustment. The balance is for inflationary adjustments and to replace non-appropriated funds (carryover) that were used to finance the fiscal year 2008 financial plan, but which at this time are expected to decline in fiscal year 2009. If carryover is not replaced with direct appropriated funds, we would be forced to reduce current on-board staffing. This would, in turn, adversely affect our ability to carry out the AO's statutory responsibilities and serve the courts. We will keep you apprised of actual carryover estimates as the year progresses. Should carryover surpass our estimates, the amount of appropriations we are requesting could be reduced.

CONCLUSION

Chairman Durbin, Senator Brownback, members of the subcommittee, I have shared with you only a few examples of the diverse issues we handle and the type of services and support the Administrative Office provides the Federal Judiciary. In addition to our service to the courts, the AO works closely with the Congress, in particular, the Appropriations Committee and its staff, to provide accurate and responsive information about the Federal Judiciary. I recognize that fiscal year 2009 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today. I would be pleased to answer your questions.

ATTACHMENT

FIVE-YEAR COURTHOUSE PROJECT PLAN FOR FISCAL YEARS 2009–2013 AS APPROVED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES ON MARCH 11, 2008

[Estimated dollars in millions]

		Cost	Score	Estimated net annual rent
Fiscal year 2009:				
Austin, TX	Add'l S&D/C	$114.0	82.0	$6.5
Salt Lake City, UT	C	168.5	67.9	11.4
Savannah GA	Add'l. D	2.0	61.3	3.5
San Antonio, TX	S	18.0	61.3	9.2
Mobile, AL	Add'l. S /C	181.5	59.8	4.7
TOTAL		484.0		35.4
Fiscal year 2010:				
Nashville, TN	Add'l D/C	164.6	67.3	7.0
Cedar Rapids, IA	Add'l D/C	136.8	61.9	6.1
Savannah GA	C	52.4	61.3	3.5
San Jose, CA	Add'l S	32.0	54.5	9.4
Greenbelt, MD	S&D	10.5	53.8	1.6
TOTAL		396.3		27.5
Fiscal year 2011:				
San Antonio, TX	C	160.8	61.3	9.2
Charlotte, NC	C	106.1	58.5	7.1
Greenville, SC	C	66.4	58.1	4.1
Harrisburg, PA	C	48.1	56.8	5.4
San Jose, CA	D	14.4	54.5	9.4
TOTAL		395.8		35.2
Fiscal year 2012:				
Norfolk, VA	C	87.8	57.4	5.1
Anniston, AL	C	17.1	57.1	1.1
Toledo, OH	C	91.8	54.4	5.9
Greenbelt, MD	C	59.0	53.8	1.6
TOTAL		255.7		13.8
Fiscal year 2013: San Jose, CA	C	188.0	54.5	9.4
TOTAL		188.0		9.4

S = Site; D = Design; C = Construction; Add'l. = Additional.

In fiscal year 2004, GSA requested only design funds for San Antonio, TX, which was planned to be built on a federally owned site. GSA advises that a privately owned site will be needed, which, therefore, requires funding to acquire a site.

All cost estimates subject to final verification with GSA.

FEDERAL PROTECTIVE SERVICE AND PILOT PROJECT

Senator DURBIN. Let me go to some questions here, if I can.

Judge Gibbons, last year when there was testimony about the adequacy or inadequacy of the Federal Protective Service, we did have a meeting and discussed options, and one of those was to extend perimeter security responsibility to the U.S. Marshals in seven different instances of primary courthouses. In your testimony, you indicated the pilot will begin in the fourth quarter of 2008 and will be in effect for 18 months.

I have a couple questions for you. Why did it take so long? Why could it not begin earlier? And second, has the performance of the

Federal Protective Service in other places—these in particular and other places as well—improved during the past year?

Judge GIBBONS. To answer the second part of it first, we are not aware of any improvements. In fact, you may be aware that there was a Government Accountability Office (GAO) report that addressed perimeter security at Federal buildings generally, not court facilities in particular, and its findings seemed similar to our observations, although the judiciary was not specifically mentioned or consulted in the course of the report.

Why did it take so long? I am not sure I can answer that directly other than in Government, these things take a while. What has to happen in each particular facility is an assessment of the needs, acquisition of the necessary equipment, and the hiring of the necessary personnel. These, of course, are court security officers who would not be already on board, and they must have the background checks, all the vetting that accompanies law enforcement or security-type employees. That is my supposition.

[The statement follows:]

While the Senate's version of the Judiciary's fiscal year 2008 appropriations bill included a provision establishing the pilot project, the House version of the bill did not include such a provision. The pilot project provision was included in the final conference agreement on the omnibus appropriations bill which was enacted into law on December 26, 2007. The Judiciary and the U.S. Marshals Service (USMS) took preliminary steps regarding the pilot project prior to and after the Senate Appropriations Committee reported its bill with the provision in July 2007, but enactment of the 2008 omnibus bill was needed in order to take definitive steps to implement the pilot project.

The current plan is to initiate contracting actions for both security systems and court security officers at all sites during fiscal year 2008. Due to contractual timelines, however, most sites will probably not be fully transitioned and ready for implementation until the first quarter of fiscal year 2009. A pilot site will only be implemented when it can be accomplished in a manner that is satisfactory to the local court, the USMS, and the Committee on Judicial Security. The actual implementation at each site will also need to take into consideration the length of time necessary for the USMS to: medically screen court security officer applicants; conduct background investigations; provide the necessary notification to the security companies that provide the FPS contract guards to stop service; and to assume control of the FPS security systems and equipment, which can vary by location.

The Moynihan Courthouse pilot was implemented in March 2008 although that site, unlike the other six sites, only involved bringing FPS equipment under USMS control. For the six remaining sites, in addition to bringing FPS equipment under USMS control, each will also require the hiring of additional court security officers which can take several months to accomplish. Of these six sites, the Dirksen Courthouse will be the next brought online. The USMS and the Committee on Judicial Security will conduct formal evaluations periodically throughout the pilot period to assess whether the program's goals are being met and to identify areas for improvement. Congress will be kept apprised of the program's status. The seven sites selected for the pilot and their planned implementation date are detailed in the table below.

Pilot Site	Planned Implementation Date
Daniel Patrick Moynihan U.S. Courthouse, New York, NY	Implemented March 2008
Everett McKinley Dirksen U.S. Courthouse, Chicago, IL	September/October 2008
Sandra Day O'Connor U.S. Courthouse, Phoenix, AZ	October/November 2008
Evo A. DeConcini U.S. Courthouse, Tucson, AZ	October/November 2008
Russell B. Long Federal Building/U.S. Courthouse, Baton Rouge, LA	October/November 2008
Old Federal Building and Courthouse, Baton Rouge, LA	October/November 2008
Theodore Levin U.S. Courthouse, Detroit, MI	November/December 2008

COURT SECURITY

Senator DURBIN. Let us go to the issue of the adequacy of the Marshals Service in gauging threat assessments against Federal judges and courthouses. The Justice Department's inspector general came up with a list of six recommendations to improve the protection of the judiciary. Five I understand were implemented. One that was not related to whether or not the Marshals Service should be notified, in addition to local law enforcement authority, of any alarm events at the home of a Federal judge. This is, of course, of special interest to us in Chicago because of the tragedy involving Judge Joan Lefkow's family not that long ago.

Does the judiciary have an opinion about whether dual notification of both law enforcement and the Marshals Service is necessary when a home alarm goes off?

Judge GIBBONS. I am not aware of whether we have taken a formal position about that. Perhaps Director Duff knows. But I am aware, at least in the district court where I formerly served in Memphis and where I am still in the same building, that in that particular district, the marshals are notified because I am aware of an incident that occurred last week in a district judge's home.

Senator DURBIN. If you could find out whether any formal position has been taken and let us know, we would appreciate it.

Judge GIBBONS. We will certainly supplement the record.

Senator DURBIN. And what is the general reaction of the judiciary to this home protection system that we have underway?

Judge GIBBONS. We are very grateful for it.

Senator DURBIN. Well, that is good to hear.

[The information follows:]

The Judicial Conference's Committee on Judicial Security has discussed the recommendation in the Department of Justice Inspector General's report concerning the response to home intrusion detection system alarm events at judges' residences. The Committee concluded that, in general, local law enforcement personnel are best suited to respond to an alarm; however, the Committee also supports appropriate coordination with the U.S. Marshals Service of instances that warrant further investigation.

COURTHOUSE CONSTRUCTION

Senator DURBIN. Now let us talk about courthouse construction. The fiscal year 2009 budget from the President provides funding for only one courthouse, the courthouse annex in San Diego. In fiscal year 2005, 4 years ago, San Diego was one of four emergency projects on the judiciary's revised 5-year courthouse project plan. Due to increased construction materials costs, the scope of the project was reduced, but the project still requires $110 million as requested by the President in fiscal year 2009 in order to be completed.

Why do emergency projects such as this not appear on the judiciary's updated 5-year plan?

Mr. DUFF. If I might answer that one, Mr. Chairman. It is because they require additional funding that needs to be sought by GSA. Our 5-year plan identifies the top priorities each year for new courthouse construction funding. What happened with regard to San Diego, as well as Los Angeles, is they encountered difficulties hiring construction companies within the funding that was pro-

vided to build the courthouse. The delays in construction have caused the cost to escalate enormously, particularly in California. And it then becomes GSA's responsibility to seek that additional funding, and while we fully support the additional funding for the new courthouses in San Diego and Los Angeles, they do not go back on our 5-year plan list. As I said, the GSA is responsible for seeking the additional funding for those courthouses.

SENIOR JUDGES

Senator DURBIN. I want to ask a question for the record on the budgetary impact of judges seeking senior status. I understand that when judges become eligible, they decrease their workload by 50 percent and relocate to other office space, freeing up their former space and staff for existing full-time judges. The senior judge is entitled to new staff, three law clerks and one administrative staffer. So all this results in requiring more resources.

How many judges are currently eligible for senior status?

Judge GIBBONS. I am not sure about that, and perhaps Director Duff can answer that.

But I do want to comment on an assumption that the question makes. Senior judges may take a 50 percent caseload. They may take a full caseload and some do. They may take variations on those two. Their space may become available. If they are taking a full caseload, the space likely does not become available, particularly if they are an appellate judge. Their need for staff and their need for space are assessed in most circuits according to the caseload they happen to be taking. So it is not really just a one-profile situation. There are many, many variations on both the caseload they take, the staff they have, and the space they occupy.

Senator DURBIN. Mr. Duff, do you know?

Mr. DUFF. I do. As of December 31, 2007, there were 473 Article III senior judges, and 92 active judges were eligible to take senior status. An additional 48 currently active judges have senior status eligibility dates between January 1, 2008, and December 31, 2008. Whether those 48 will choose to take senior status, of course, remains to be seen.

Senator DURBIN. But it sounds, in most instances, that choosing senior status will require more resources.

Mr. DUFF. Yes, in the sense that when a judge takes senior status, a new judge may be appointed, and so that does require additional resources.

Judge GIBBONS. But that is really too simplistic because if they are continuing to do work, that alleviates our need for new judgeships which come with accompanying space and staff needs. I believe about 17 percent of the overall work of the Federal judiciary is performed by senior judges.

Mr. DUFF. Yes. That is an important figure. Without our senior judges, we would be overwhelmed with work.

[The information follows:]

While there are staff and space costs associated with a judge taking senior status, it is important to emphasize that senior judges are essentially volunteering their time in continued service to the federal judiciary. A judge eligible for senior status could otherwise choose to retire and leave office at the same pay without rendering any judicial service at all. But over 400 appellate and district court judges forego full retirement, and instead take senior status and continue taking cases. They are

essential to the work of the federal courts. In 2007, senior judges participated in 19 percent of cases terminated on the merits in the appellate courts. In the district courts, senior judges handled 18 percent of the civil and criminal caseload. Both of these statistics are at the highest level in a decade.

The number of senior judges working in the courts does impact the number of new judgeships the Judicial Conference requests from Congress. If the Judiciary were to see a sharp dropoff in the number of senior judges working in the courts, it would likely result in more judgeships being requested from Congress in order to make up for the lost productivity resulting from fewer senior judges.

COURTS OF APPEALS FOR THE FEDERAL CIRCUIT

Senator DURBIN. The Federal Circuit is requesting an almost 20 percent, or $5.3 million, increase in the budget for next fiscal year. The largest part of this, $2.5 million, appears to be for staffing and leased office space and build-out for senior judges.

What is the space situation at the Federal Circuit and what is the status of judges going to senior status? Is that included in the original number that you gave me?

Judge GIBBONS. Well, actually as you know or may know, the Federal Circuit has the statutory authority to submit its own budget directly to Congress, and its budget does not go through the process of approval by the Judicial Conference, nor is it subject to the oversight of the Budget Committee. We do ask for its submission, along with our own. But I would prefer to let that court respond to its own budget submission.

Senator DURBIN. I see. So you do not talk to those people.

Judge GIBBONS. We do talk to them. I just think it appropriate that they be their own advocates.

[The information follows:]

The United States Court of Appeals for the Federal Circuit has requested in fiscal year 2009 an adjustment to the base appropriation to lease chambers workspace outside the courthouse for senior judges for whom there is no remaining space in the courthouse.

This increase for leased space, in the amount of $298,000, will help enable the Court to provide the workspace necessary for up to five additional senior judges for whom there is no remaining space in our courthouse. Four Federal Circuit judges are eligible to take senior status now, three more will become eligible in fiscal year 2009, and another judge will become eligible in fiscal year 2010.

In addition, the Federal Circuit has also requested $1,860,000 to build out leased chambers for five of the seven judges who either are now or will be eligible to take senior status in fiscal year 2009 (plus an eighth judge eligible and expected to take senior status in fiscal year 2010) and for whom there is no room in the existing courthouse. This amount is based on an estimate coordinated with the Administrative Office of the United States Courts and on personal experience with GSA in renovating chambers in this courthouse. This amount will provide the leased chambers with the furniture, furnishings and finishes consistent with the U.S. Courts Design Guide.

In fiscal year 2009 the Federal Circuit will have seven judges who are or will be eligible to take senior status. Currently, the Federal Circuit has no additional space available in the National Courts Building for senior judge chambers, and has no off-site leased space for senior judge chambers. If any of the seven judges who are or will be eligible to take senior status in fiscal year 2009 do so, there will be no available chambers for them in the National Courts Building or in off-site leased space once a replacement judge is confirmed. At least two of the seven judges who will be eligible for senior status are expected to take senior status when they become eligible in fiscal year 2009. It is imperative that the Federal Circuit acquire off-site leased chambers for the two judges who have indicated a desire to take senior status in fiscal year 2009.

By fiscal year 2010, eight of the twelve active judges on the Federal Circuit will be eligible to take senior status. If the Federal Circuit acquires off-site chambers for senior judges one chambers at a time, only after the President has been notified a judge is taking senior status, the Federal Circuit could have senior judges occu-

pying off-site leased space in eight different locations around Washington, DC, perhaps far from the courthouse. Accordingly, the Court is working with the General Services Administration and the Administrative Office of the U.S. Courts to identify and lease nearby space off-site this year (fiscal year 2008) to accommodate up to five senior judges. Five is a mid-range number the Court believes to be reasonable in providing space for fewer than all prospective senior judges but more than none or one. The number will allow for changes in decision by judges based on health or other personal issues without over-reaching by seeking off-site space for every eligible judge who may or may not choose to take senior status. Five will allow for economies of scale in long-term leasing and building out prospective chambers while reducing the risk of leaving space unoccupied.

SUPREME COURT MODERNIZATION PROJECT

Senator DURBIN. The care of the buildings and grounds fiscal year 2009 appropriation request totals $18.4 million, an increase of $6.2 million over the 2008 appropriation level. Modernization of the Supreme Court construction project began in 2004 and expected completion is the fall of this year, a total cost of $122.3 million.

Can you tell me in the most general terms—I do not want you to talk about security, obviously—what was achieved with the expenditure?

Mr. DUFF. Mr. Chairman, that was the Supreme Court?

Senator DURBIN. Yes.

Mr. DUFF. They submit their own budget request, and as I understand it, they have a hearing tomorrow, at least over on the House side. I am sure they will be pleased to respond directly to the question. We can submit it to them for their response. But their budget request is separate from the Federal courts generally.

[The information follows:]

In 2004, the Architect of the Capitol commenced a major project to provide the first significant renovation of the Supreme Court building since it was constructed in 1935.

Phase I of the project—the construction of the underground police annex, the Architect of the Capitol (AOC) shop and parking areas—was completed in late 2005. Phase II of the project—the interior building modernization—is ongoing and includes updated life safety systems, windows, mechanical, electrical, and plumbing systems. The work on one of the four building quadrants is complete. The second quadrant is scheduled for completion during the summer of 2008.

The contractor's projected completion date for the entire modernization project is September 2009. The Court and the AOC project team believe, however, that this estimate is overly optimistic and that the project will be completed in the summer of 2010. Although the building modernization project is more than a year behind, the project continues to be within budget.

The fiscal year 2009 appropriation request of $18.4 million also includes funding for two projects in addition to the modernization project: (1) landscape expenses, including repairs of driveways and walkways; and (2) the continuation of roof repairs. The Architect of the Capitol expects to request additional funds for roof repairs through fiscal year 2011.

Senator DURBIN. And before anyone is critical of this 4-year construction timetable for the Supreme Court, let me tell you we are still anxiously awaiting the opening of the Capitol Visitor Center which, according to the most recent report, will be done mañana.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

I would like to ask about the retroactivity of crack cocaine sentencing. The U.S. Sentencing Commission promulgated sentencing guidelines that Federal trial court judges consult when sentencing defendants. Last year, the Commission amended Federal guidelines, reducing offenses under Federal sentencing guidelines for

crack cocaine. Furthermore, the Commission unanimously decided to make the policy change retroactive and the retroactivity became effective March 3 of this year.

Judge Gibbons, regarding the retroactivity of crack cocaine sentencing, is it correct that you expect not to need additional resources despite a surge of motions for reductions in sentence?

Judge GIBBONS. That is correct. There will be a lot of defendants processed with requests for resentencing by the Federal courts. And we know that obviously resources will be required to process those. Probably the biggest resource challenge will be for our probation officers who will have an increase in the numbers of individuals they will be supervising as a result of this. But we do believe that we can likely handle it within existing resources. If you want a more detailed explanation about why we think that to be so, I will be happy to go into it in more detail.

Senator DURBIN. I appreciate it.

Will crime victims be notified of an inmate's release, and will they have an opportunity to provide comment to the court prior to an inmate's release?

Judge GIBBONS. I do not think that it is required in the same way that victim notification is required in terms of an initial sentencing. But if I am incorrect about that, we will certainly let you know.

[The information follows:]

The Judiciary's Ability to Absorb Retroactivity Workload

While the U.S. Sentencing Commission estimates that approximately 19,000 inmates sentenced under the previous crack cocaine sentencing guidelines may be eligible for a reduced sentence as a result of retroactive application of the revised sentencing guidelines, it is important to note that these 19,000 would potentially be released over the course of 30 years. The Commission estimates that 3,804 of the 19,000 offenders would be eligible for a reduced sentence and early release within the first year of the effective date for retroactivity (March 3, 2008). In year two another 2,118 would be eligible, 1,967 more in year three, 1,773 more in year four and 1,353 more in year five. The remaining offenders would be eligible in year six and after. These filings will be handled by various district court components, including district judges, clerks offices, probation offices, and federal defender offices. The Judiciary believes retroactivity will have the greatest impact on its probation offices, which will supervise any crack cocaine offenders that may be granted early release, including overseeing any drug testing and treatment needs that may be imposed by a court as a condition of release.

It is generally agreed that a large number of motions for a reduction in sentence will not involve court hearings and will be decided on written filings, so the courts' workload associated with processing those cases should not be unduly burdensome. The cases that require hearings will require more court resources. At present, no extraordinary measures have been necessary to address the increased workload due to retroactivity, although additional resources will be available if needed for smaller districts that may be disproportionately impacted by the number of federal offenders seeking a reduction in sentence based on retroactivity. Given all of these factors, and the staggered nature of offenders becoming eligible for a reduced sentence, the Judiciary believes it can absorb the additional workload within existing resource levels by shifting funds as necessary to meet workload demands, including ensuring that released offenders receive close supervision by a probation officer.

Victim Notification of Early Release

Judges have been asked by the Bureau of Prisons (BOP) to delay for 10 days the effective date of any sentence reduction that results in an inmate's immediate release. This delay is needed, in part, to give the BOP adequate time to notify victims and witnesses of the offender's release, as they are required to do per 18 U.S.C. § 3771. The Judiciary is unaware if the Department of Justice will attempt to contact victims to seek comment prior to an inmate's release. It should also be noted

that due to the nature of these offenses, most cases will not have an identifiable victim within the meaning of the Crime Victim Rights Act.

WORKLOAD IN THE FEDERAL COURTS

Senator DURBIN. Statistics indicate the caseload is projected to decline in some areas, criminal, appellate, civil. What is the impact of this on the workload in the courts?

Judge GIBBONS. Well, obviously, over time our workload has trended upward. We are expecting and projecting declines in a number of areas. Those are projections done with statistical models.

Obviously, there will be impacts in all areas. We are expecting bankruptcy filings to continue to trend back upward. What happens with the economy will be a major factor likely in what happens with bankruptcy filings. We are expecting at least modest increases in supervision activity by probation and pretrial services officers. We are projecting modest declines in criminal caseload across the country, without regard to what may happen in border States and other areas with heavy illegal immigration impact, and modest declines in appellate cases, and a somewhat slightly steeper decline in civil filings. But what happens one year is not necessarily what happens the next year.

[The information follows:]

Although the Judiciary's workload has begun to level off, workload in the federal courts has increased considerably in nearly all workload categories when viewed over a 10 year perspective. As summarized in the table below, from 1997 to 2007, criminal filings increased 37 percent, the number of criminal defendants grew 27 percent, offenders under supervision of a federal probation officer increased 27 percent, the number of cases activated in the pretrial services program increased 37 percent, and appellate filings grew 13 percent. Civil filings follow a more up-and-down filing pattern from year to year and grew 3 percent overall in the last decade. Bankruptcy filings are down nearly 566,000 filings from the 1997 level due in large part to the sharp decline in filings after the Bankruptcy Abuse Prevention and Consumer Protection Act took effect in October 2005.

Workload Factor	1997 Actual [1]	2007 Actual [1]	Change 2007 vs. 1997	Percent Change 2007 vs. 1997
Criminal Filings	49,376	67,503	18,127	37
Criminal Defendants Filed	69,052	88,006	18,954	27
Probation: Persons Under Supervision	91,423	115,930	24,507	27
Pretrial Services: Cases Activated	69,959	95,955	25,996	37
Appellate Filings	52,271	58,809	6,538	13
Civil Filings	265,151	272,067	6,916	3
Bankruptcy Filings	1,316,999	751,056	(565,943)	−43

[1] Data reflects the 12-month period ending June of each year.

PAY FOR BANKRUPTCY CASE TRUSTEES

Senator DURBIN. On the subject of bankruptcy, I am still baffled, troubled, and find it hard to explain that a chapter 7 bankruptcy trustee receives $60—$60—for presiding in a no-asset case. We recently proposed raising that to $120.

Do you believe the bankruptcy trustees are entitled to a raise in compensation in no-asset cases?

Judge GIBBONS. Well, I am not sure. Can we get back to you on that? I have some information about it somewhere in this material, but you probably do not want to sit there while I try to locate it.

And it is not coming to the top of my head whether we have a position about that or not.

Senator DURBIN. It is not a trick question.

Judge GIBBONS. No, I know.

Senator DURBIN. We will let you provide that later.

[The information follows:]

The Judicial Conference has no position on the amount of compensation Congress deems appropriate for chapter 7 case trustees. However, the Judiciary in the past has expressed its opposition to any case trustee compensation increase that is made at the Judiciary's expense. If the Judiciary were required to pay the case trustees an additional $60 per case and did not receive a specific appropriation for that purpose, it would cost the Judiciary $30 million which could mean the loss of 375 FTEs.

Senator DURBIN. Unless there is anything further you would like to add, I want to thank you for participating in this hearing. I appreciate all of the work you did to prepare your testimony and to answer my questions. I think this forum has given us some further insights into judiciary operations.

ADDITIONAL COMMITTEE QUESTIONS

The hearing record is going to remain open for a period of 1 week until Wednesday, March 19 at noon for subcommittee members to submit statements and/or questions for the record, which we hope you can answer in a timely fashion.

[The following questions were not asked at the hearing, but were submitted to the judiciary for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

COURT SECURITY—U.S. MARSHALS SERVICE

Question. Your fiscal year 2009 budget request seeks 17 new U.S. Marshals positions (9 FTE). Why are these additional positions needed? Are they new positions or are they replacing vacancies?

Answer. For fiscal year 2009, the U.S. Marshals Services (USMS) requests 17 new Judiciary-funded positions (9 FTE) for a total of 64 full-time positions (56 FTE). These are new positions, not backfills. The Judiciary currently funds 47 full-time USMS positions to administer the Judicial Facility Security Program. This program includes the Office of Court Security, which is responsible for the daily operations and personnel management of the court security officer (CSO) program; the Office of Security Contracts, which is responsible for the daily contract responsibilities with the private contractors and the district contracting officer's technical representatives; the Office of Security Systems, which is responsible for all security and monitoring systems for judicial space; and the Office of Financial Management, which is responsible for the daily oversight responsibility on financial matters.

A summary of the requested positions is listed below:

—The Office of Security Systems requests funding for five additional physical security specialists and one administrative assistant/management support specialist in order to keep up with the workload that has resulted from expanding responsibilities and additional oversight duties. The court security equipment program has changed dramatically over the past few years, and program requirements and oversight responsibilities have increased significantly. This occurred as a result of the growth of the court security systems program and focus on improved security procedures, systems technologies and maintenance. The additional personnel are required to keep pace with these expanded duties.

—The Office of Court Security requests funding for four program analyst positions to manage the growing workload in medical evaluations for CSOs, and the new background investigation requirements for CSOs mandated by Homeland Security Presidential Directive 12.

—The Office of Security Contracts (OSC) requests funding for one supervisory contract specialist and two contract specialists. Over the past several years, the dollar value of contracts has grown significantly, as has the number of procurement actions required to support the JFSP. Staffing has not grown to match

the increase in workload. Currently, the OSC has two supervisory contract specialists, six contract specialists, and a chief. In light of workload increases, the current number of contract specialists is insufficient. To provide appropriate contract management, including an expanded audit capability, three additional positions are required.

—The Office of Financial Management requests funding for one additional budget analyst to address the increased workload of the Judicial Facility Security Program. The Office of Financial Management currently has a staff of five, consisting of a chief, deputy chief and three budget analysts.

—Two new equal employment opportunity counselors are requested to handle the growing number of equal employment opportunity (EEO) complaints filed by CSOs. Previously, EEO counselors handing CSO complaints have been funded through the USMS's Salaries and Expenses account and represented a relatively small number of total EEO workload. With the growth in EEO activity, this request will ensure that the Judiciary's Court Security appropriation properly funds the USMS's costs associated with administrating the court security program.

—The Technical Operations Group requests funding to convert a contractor position to a program analyst to provide the necessary financial, administrative and contractual expertise to support the Courthouse/CSO Radio Program. Funding for the current contractor position will be used to partially offset the cost of this position. Contractors are limited in the duties that they can perform so this conversion will provide an employee who can perform all procurement duties.

COURT SECURITY—DEPARTMENT OF JUSTICE INSPECTOR GENERAL REPORT

Question. Last September, the Justice Department's Inspector General released a report indicating a continued problem with the Marshals Service and their effectiveness in gauging threat assessments against federal judges and courthouses. The IG's report said the Marshals Service had a backlog of threat assessments and was slow in staffing a new office designed to collect and analyze information on potential threats.

The IG's report made six recommendations for the Marshals Service to improve its protection of the Judiciary. In its response to the recommendations, the Marshals Service said it would follow five of them.

The one item that the Marshals Service disagreed with was the recommendation to require that the Marshals Service, in addition to local law enforcement, be notified of all alarm events at the home of a federal judge. This is of particular interest to me because my colleague Senator Obama and I initiated the home alarm program for federal judges after the tragic killings of Judge Lefkow's husband and mother inside her home.

Does the Judiciary have an opinion about whether dual notification—of both local law enforcement and the Marshals Service—is necessary when a home alarm goes off?

Answer. The Judicial Conference's Committee on Judicial Security has discussed the recommendation in the Department of Justice Inspector General's report concerning the response to home intrusion detection system alarm events at judges' residences. The Committee concluded that, in general, local law enforcement personnel are best suited to respond to an alarm; however, the Committee also supports appropriate coordination with the U.S. Marshals Service of instances that warrant further investigation.

Question. Has the Marshals Service implemented the other five recommendations of the IG's report relating to threat assessments?

Answer. We understand that, with the exception of one recommendation for the USMS to develop a formal plan that defines objectives, tasks, milestones, and resources for implementing a protective intelligence function to identify potential threats, the USMS has responded to the other four recommendations in the IG's report relating to threat assessments. Specifically, the USMS has: (1) developed a formal plan that defines objectives, tasks, milestones, and resources for the new threat assessment process; (2) created a workload tracking system for threat assessments; (3) modified the USMS databases to support the new threat assessment process and protective intelligence function to identify potential threats; and (4) issued operational guidance for requesting and deploying Technical Operations Group resources and Rapid Deployment Teams.

Question. In your testimony, you indicated the Marshals Service established a new Threat Management Center last September which you said "serves as the nerve center for responding to threats against judges and court personnel."

Do you believe this new Threat Management Center has helped the Marshals Service implement the recommendations made in the IG's report?

Answer. Yes. The Threat Management Center (TMC) that is part of the Office of Protective Intelligence at the USMS and was opened in September 2007 provides a 24/7 response capability for intake and review of threats made against the Judiciary. A new threat analysis process was initiated, and weekly and monthly reports about pending threats against the Judiciary are now produced. A workload tracking system for the TMC has been developed to insure a backlog of threat assessment does not occur again. Additional staffing for the TMC in fiscal year 2007 has also enabled the USMS to dedicate more resources to investigating and responding to threats in a more timely manner.

Question. In its September 2007 report, the Inspector General at the Justice Department indicates it conducted a survey of federal judges regarding implementation of the home alarm program that Senator Obama and I initiated. According to the IG's study, 88 percent of federal judges said they were "very" or "somewhat" satisfied with the home alarm program. About the same number of federal judges, 87 percent, said they were "very" or "somewhat" satisfied with the Marshals Service performance in providing protection.

Judge Gibbons, I realize you're the chair of the Judicial Conference's Budget Committee, not the Judicial Security Committee, but can you give us a sense of how the Marshals Service could do a better job with the home alarm program?

Answer. First, I would like to thank the Subcommittee for its support of such an important program to protect judges and their families at home. The Judiciary and the USMS worked hard to make sure that the money Congress appropriated for this project was spent wisely, and that every judge who wanted a home alarm system received one. We have heard very few complaints associated with USMS's implementation of the alarm program. I would add that the USMS has been responsive to our needs when questions have arisen about the program.

Question. Has every federal judge who wanted a home alarm system had one installed at this point?

Answer. To the best of our knowledge, yes. As of March 11, 2008, 1,565 judges have participated in the program and have a home alarm system.

Question. Can you give us a sense of how the Marshals Service could do a better job with their overall mission of providing protection to the Judiciary?

Answer. The biggest challenge facing the USMS is securing adequate resources to make sure their statutory mission to protect the federal Judiciary is realized. The continued budgetary constraints on the staff of deputy U.S. marshals (funded through the USMS's Salaries and Expenses account, not the Judiciary's Court Security account) for courthouse operations is troubling, especially in light of new Executive Branch initiatives such as Operation Streamline that will increase the volume of defendants being produced in courts along the southwest border.

Question. In your testimony, you asked for an increase of $4 million "for necessary investments in court security, such as court security systems and equipment and new positions at the U.S. Marshals Service (9 FTE)." Please describe in more specific detail what the $4 million would go toward and why you think it's necessary above and beyond the current allocation.

Answer. The $4 million requested for program increases will provide funding for 17 new U.S. Marshals Service positions as explained in the response to the question above ($1.1 million); one new contractor position at the U.S. Marshals Service ($124,000); rent reimbursement to the U.S. Marshals Service for Judiciary funded positions ($710,000); reimbursement to the U.S. Marshals Service for EEO investigations ($123,000); and additional security systems and equipment ($2.0 million).

The request of $124,000 is for a contract electronics technician position to handle the increase in troubleshooting and repair of infrastructure and portable radio equipment than is currently possible by the sole program manager on board. Funding is essential for the continued success of the program with respect to the nationwide reprogramming and encryption goals set forth in fiscal year 2007 and beyond. Without funding, the USMS's efforts to encrypt all CSO radios nationwide will be further delayed.

The request of $710,000 would allow the Administrative Office (AO) of the U.S. Courts to reimburse the USMS headquarters for the space occupied by Judiciary-funded USMS staff. The AO currently transfers funding to the USMS to fund personnel compensation and benefits and other costs necessary to administer the Judicial Facility Security Program. In the past, the transfer has not included funding for associated rent costs.

The request of $123,000 is to reimburse the USMS for contractors hired by the USMS to investigate, process and resolve the anticipated increase in EEO complaints filed by CSOs. This request will ensure that the Judiciary's Court Security

appropriation properly funds the USMS's costs associated with administrating the court security program.

A $2 million increase is requested for cyclical replacement of access control head end computers. On August 27, 2004, President Bush signed Homeland Security Presidential Directive (HSPD)-12 for the purpose of establishing a mandatory, government-wide standard for security and reliable forms of identification, known as the Personal Identity Verification (PIV) ID Card, to be issued by Executive Branch agencies to its employees and contractor staff. This new initiative consists of upgrading and replacing access control systems nationwide to meet HSPD–12 compliance requirements, as well as the implementation of a cyclical replacement program for these systems. Finally, since this is going to be the standard ID card for the majority of government employees and long-term contractors, Judicial Branch employees and contractors will need the card to facilitate access to federal facilities.

IMPLEMENTATION OF THE COURT SECURITY IMPROVEMENT ACT

Question. Less than three months ago, Congress passed and the President signed the Court Security Improvement Act of 2007. This is one of the most comprehensive court security bills ever passed by Congress. One of the provisions requires the Marshals Service to consult with the Judicial Conference on a continuing basis regarding court security.

Has this provision been implemented yet? Has a consultation process begun between the Marshals Service and the Judicial Conference?

Answer. Even prior to the enactment of the Court Security Improvement Act of 2007, the relationship between the USMS and the Judicial Conference had improved dramatically under the leadership of the current USMS Director John Clark. In addition, in October 2005 the Judicial Conference created a Committee on Judicial Security to focus solely on security issues for the Judiciary and to liaison with the USMS. Since that time, the USMS has attended the bi-annual meetings of the Committee to discuss issues of importance to the court security program.

An example of the consultation process that exists between the USMS and the Judicial Conference is the recent pilot project that was approved in the fiscal year 2008 omnibus appropriations bill for the USMS to assume perimeter security protection from the FPS at select primary courthouses. The judges on the Committee on Judicial Security have consulted extensively with the USMS to craft a pilot program that is both responsive to the Judiciary's needs and reflective of budgetary constraints.

Question. Have other provisions of the Court Security Improvement Act been implemented yet? Is everything going smoothly so far? If not, what are the impediments?

Answer. Implementation of provisions that directly impact the Judiciary in the new law appear to be going smoothly although it remains to be seen whether the $20 million per year in appropriations through 2011—authorized in section 103 of the Act for the USMS to hire additional deputy marshals—will be provided. There are multiple provisions in the Act that do not directly affect the Judiciary, so the Judiciary has no view regarding those.

COURTHOUSE CONSTRUCTION (SAN DIEGO AND LOS ANGELES)

Question. The fiscal year 2009 President's budget provides funding for only one courthouse—the Courthouse Annex in San Diego. In fiscal year 2005, San Diego was one of four emergency projects on the Judiciary's Revised Five-Year Courthouse Project Plan (fiscal years 2005–2009). Due to increased construction materials costs, the scope of the project was reduced but the project still requires $110 million, as requested by the President in fiscal year 2009, in order to be completed. The Los Angeles courthouse project is in a similar situation, requiring much more funding. What is the latest on that project?

Answer. The courthouse problem in Los Angeles is a serious one. The Central District of California is the largest district in the country and current facilities are completely inadequate, primarily because of an insufficient number of courtrooms to meet the growing needs of the district court and significant security issues at the current location. Market conditions and delays have created a price tag for the Los Angeles project that far exceeds GSA's original estimates. Despite the sizable reductions in scope already made by the court, the cost of this project continues to grow and will only get more expensive as time goes on. The AO, the court, and GSA have been working together to find a solution.

While the Judiciary recognizes how costly this project is, especially in a time of constrained resources for non-security discretionary programs, we believe the final project design must address long-term needs and provide an environment in which

the judicial process can function safely and effectively. The Judiciary also wants to ensure that when alternatives are considered, all costs associated with the options are included in the analysis. Consequently, the Judiciary is pleased that GAO has been asked to conduct a review of this project and trusts that it will address all aspects of the issue. The Judiciary's understanding is that GAO will look into the reasons for the delay, the effects of the delay, and the challenges faced in managing this project. The Judiciary looks forward to receiving GAO's findings.

BUDGETARY IMPACT OF JUDGES ASSUMING SENIOR STATUS

Question. My understanding of senior status is when judges become eligible for senior status, they decrease their workload by 50 percent, and need to relocate to other office space, freeing up the former space and staff for an existing full-time judge. Then the senior judge is entitled to new staff: 3 law clerks and one administrative staff. So, all this results in requiring more resources (for which less work may be accomplished).

Answer. Many senior judges do not reduce their workload by 50 percent. Many continue to carry a full caseload. There is no specific workload requirement for senior judges although a senior judge must perform "substantial judicial work" to employ staff and receive "suitable quarters." The number of staff the senior judge receives must relate directly to the workload he or she performs. An annual certification process in place considers projected and actual workload in order for a senior judge to continue having office space and staff support.

While there are staff and space costs associated with a judge taking senior status, it is important to emphasize that senior judges are essentially volunteering their time in continued service to the federal Judiciary. A judge eligible for senior status could otherwise choose to retire and leave office at the same pay without rendering any judicial service at all. But over 400 appellate and district court judges forego full retirement, and instead take senior status and continue taking cases. They are essential to the work of the federal courts. In 2007, senior judges participated in 19 percent of cases terminated on the merits in the appellate courts. In the district courts, senior judges handled 18 percent of the civil and criminal caseload. Both of these statistics are at the highest level in a decade.

When Article III judges take senior status, they continue to receive the salary they were earning at the time they left active service. For a senior judge to receive the same cost of living increases as an active Article III judge, the senior judge must perform at least 25 percent of the work performed by "an average judge in active service." 28 U.S.C. §§ 371(b)(1), (e)(1).

The number of senior judges working in the courts are taken into consideration when determining the number of new judgeships the Judicial Conference requests from Congress. If the Judiciary were to see a sharp dropoff in the number of senior judges working in the courts, it would likely result in more judgeships being requested from Congress in order to make up for the lost productivity resulting from fewer senior judges.

Question. How many judges are currently eligible for senior status?

Answer. As of December 31, 2007 there were 473 Article III senior judges, and 92 active judges were eligible to take senior status. An additional 48 currently active judges have senior status eligibility dates between January 1, 2008 and December 31, 2008.

Question. Of those, how many have been eligible for more than one year?

Answer. Of the 92 active judges that were eligible to take senior status as of December 31, 2007, 77 had been eligible to take senior status prior to January 1, 2007. The other 15 active judges became eligible for senior status during 2007.

Question. So, this means that the Judiciary must continually request funding for space and staffing for senior judges—and sometimes you receive this funding—but you may not always need it?

Answer. The Judiciary does not assume that all judges eligible to retire or take senior status will in fact do so. The Judiciary uses historical patterns to estimate the number of judges that will retire or take senior status. In formulating the fiscal year 2009 budget request, the Judiciary estimated that 33 of the 55 judges eligible in fiscal year 2009 will retire or take senior status. Based on the Judiciary's projection of when judges would retire/take senior status during the year, the Judiciary estimates that the 33 judges would equate to 20 FTE for budget purposes. Of the 20 FTE, 18 are projected to take senior status and continue taking cases, and two to retire and leave the federal bench.

In the event fewer judges take senior status than the Judiciary requested funding for, that funding is carried forward to offset the Judiciary's appropriation requirements in the following fiscal year. However, the Judiciary endeavors to provide the

Appropriations Subcommittees with the most accurate projection of judges expected to take senior status. As is done each year, the Judiciary will continue to refine its estimates of judges retiring/taking senior status and will update the Appropriations Subcommittees—through the 2008 Spring and Fall budget re-estimate process—on any changes to senior judge projections that will impact the Judiciary's fiscal year 2009 appropriation requirements.

SENIOR JUDGES AT THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Question. The Federal Circuit is requesting an almost 20 percent (or $5.3 million) increase in its budget for fiscal year 2009. The largest part of this increase ($2.5 million) appears to be the staffing, and leased office space and build-out for senior judges.

[CLERK'S NOTE.—The Court of Appeals for the Federal Circuit's budget request does not fall under the jurisdiction of the Judicial Conference of the United States and its Budget Committee. Accordingly, this response was prepared by the Federal Circuit and its Chief Judge Paul R. Michel.]

What is the space situation at the Federal Circuit and what is the status of judges going to senior status?

Answer. Federal Circuit Judges occupy every judge's chambers available to the Federal Circuit in the National Courts Building complex. (The building complex houses two courts, and both courts have assigned all available chambers space to judges.) This includes one sub-standard chambers on the ground floor of Dolley Madison House. That chambers has historically been used as swing space or to house visiting judges temporarily sitting by designation, or for other special purposes. There is no other space suitable or available to judges. The Federal Circuit has no vacant and unassigned chambers, and none is anticipated.

In fiscal year 2009 the Federal Circuit will have seven judges who are or will be eligible to take senior status. Today the Federal Circuit has no space available in the National Courts Building for even one additional senior judge and has no off-site leased space for them, either. If any one of the seven judges who is or will be eligible to take senior status in fiscal year 2009 does so, there will be no chambers available in the National Courts Building or in off-site leased space once a replacement judge is confirmed. At least two of the seven judges who will be eligible for senior status are expected to take senior status when they become eligible in fiscal year 2009. The Federal Circuit must acquire leased space off-site for the judges who have indicated a desire to take senior status in fiscal year 2009 and 2010.

Note about staffing for a senior judge: Historically, senior judges at the Federal Circuit work less than 50 percent of an active judge's caseload and are therefore entitled by rule to only one law clerk.

Question. So, the Federal Circuit seeks the funding associated with senior status, not knowing whether the judges will actually take senior status?

Answer. As a rule, no one knows when a judge will decide to take senior status except that judge. Timing can be highly personal, and advance notice varies for each individual. There are strong indications that at least one of the judges eligible to take senior status in fiscal year 2009 plans to do so, and that at least one additional judge will choose to take senior status in fiscal year 2010. By fiscal year 2010, eight of the twelve active judges on the Federal Circuit will be eligible to take senior status. If the Federal Circuit acquires off-site chambers for senior judges one chambers at a time, only after the President has been notified that a judge is taking senior status, the Federal Circuit could have senior judges occupying off-site leased space in as many as eight different locations around Washington, DC, perhaps far from the courthouse. Logistics, security, and transportation would be challenges, and judges would feel isolated from their colleagues. Accordingly, the Court has been working with the General Services Administration and the Administrative Office of the U.S. Courts to lease nearby off-site space this year (fiscal year 2008) to accommodate up to five senior judges in the next two years. Five is a mid-range number the Court believes to be reasonable in providing space for prospective senior judges. The number will allow for changes in decision by judges based on health or other personal issues without over-reaching by seeking off-site space for every eligible judge who may or may not choose to take senior status. Five chambers will allow for economies of scale in long-term leasing and building out prospective chambers while reducing the risk of leaving significant space unoccupied.

Question. What happens if the funding is provided and the judges do not take senior status?

Answer. The chambers will remain available until occupied by whichever judge needs them. If Judge A does not take senior status in fiscal year ____ the chambers will remain available for Judges B, C, D, etc. As described above, it is virtually cer-

tain that off-site chambers will be occupied in the next two years by at least one judge and most probably by at least two judges, although not all chambers will likely be occupied at the outset. It is possible that housing senior judges together in suitable space near the courthouse will induce judges to take senior status when they wish to take it, knowing they have appropriate space in close proximity to their colleagues. It takes time to find suitable space, negotiate a lease through GSA, and design and complete the build out. The Court has been at this effort for several years and is very nearly out of time. Funds appropriated to house senior judges will not be wasted, and space will be available even on short notice to accommodate situations that arise with little or no advance warning.

IMPACT OF INCREASED BORDER ENFORCEMENT

Question. Our borders, particularly the Southwest Border, have been an area of increased enforcement in order to combat illegal immigration over the past several years. Because that increased enforcement results in more cases in the courts, we have provided the Judiciary with additional resources to manage that workload. Director Duff, your testimony indicates that this increased enforcement affects other parts of the country, not only the Southwest Border. Please discuss this in further detail as well as the resulting implications.

Answer. The increased emphasis by Congress and the Administration on immigration enforcement has had the greatest impact on the five federal district courts along the Southwest border with Mexico. Other districts throughout the country, however, have also been impacted by this increased enforcement. In 2002, there were 11,791 criminal cases for violations of federal immigration laws. Of these, 7,735 cases were in the five Southwest border district courts and 4,056 cases were in the remaining 89 judicial districts. In 2007, there were 15,898 criminal cases for violations of federal immigration laws. Of these, 10,953 were in the Southwest border courts, and 4,945 were in the remaining 89 judicial districts. Non-border immigration caseload in the federal courts increased 22 percent in this five year period. Immigration-related cases can present challenges to a court, including the need to hire or contract for qualified interpreters to assist in court proceedings.

Increased immigration enforcement has impacted our appellate courts as well. Challenges to Board of Immigration Appeals (BIA) decisions in the appellate courts totaled 1,777 cases in 2001, peaked at 12,725 cases in 2006, then declined to 9,338 cases in 2007—a more than 400 percent increase over 2001. About one-third of all BIA decisions are challenged in the federal appellate courts with 70 percent of those challenges occurring in the Second and Ninth Circuits. While BIA appeals have dropped in the last year, these cases continue to demand extensive resources since they often turn on a credibility determination by a Department of Justice immigration judge, thus requiring close judicial review of a factual record by the appellate courts.

The Judiciary will utilize the additional resources provided by Congress to respond to workload needs throughout the federal court system and not just on the Southwest border.

JUDICIAL AUTHORITY FOR OFFENDER RE-ENTRY PROGRAMS

Question. I have supported offender reentry programs like job training, education, drug and mental health treatment for many years, as part of the effort to reduce criminal recidivism. Does the Judiciary have the legislative authority it needs to increase the likelihood of successful offender reentry into the community and positive outcomes for post-conviction supervision?

Answer. The Judicial Conference believes it needs explicit authority to permit the Director of the Administrative Office to contract for non-treatment services (e.g., medical, educational, emergency housing, and vocational training) and other reentry interventions for post-conviction offenders generally. At its September 2005 session, the Conference approved proposed language which was submitted to Congress on November 14, 2005. Specifically, the proposed legislation amends 18 U.S.C. § 3672 to allow the AO Director to contract for re-entry services, including treatment, equipment, emergency housing, vocational training, and other re-entry interventions. I am pleased to report this provision was included in the Second Chance Act which was signed into law on March 30, 2008 (Public Law 110–199).

The Judicial Conference also supports legislation that would amend 18 U.S.C. § 3154 to authorize the AO Director to contract for similar services for defendants released pending trial, and to amend both 18 U.S.C. § 3154 and 18 U.S.C. § 3672 to authorize the Director to expend funds for emergency services for defendants on pretrial release and offenders on post-conviction supervision respectively. This proposed legislation was submitted to Congress on April 16, 2007.

Expansion of the Director's authority will allow probation and pretrial services officers to obtain contract services for all persons under their supervision who need them. Research consistently indicates that certain approaches yield demonstrable and measurable results in the reduction of recidivism. With expanded authority, officers will make greater use of practices such as cognitive-behavioral treatment, job training, and employment placement programs that have been proven effective in obtaining successful outcomes and making the community safer.

The addition of authority to expend funds for emergency services for defendants on pretrial release and offenders on post-conviction supervision respectively would provide officers with the ability to deal with day-to-day incidental expenses. Officers often use their own personal money to assist offenders with small expenditures such as bus fare to go for a job interview.

Of course, if expenditure authority is enacted, guidance and clarification would be developed to ensure that it is used appropriately. Some of the issues requiring clarification would include the type of "emergency" services that are authorized and the spending limit.

RENT SAVINGS

Question. Over the past few years, the Judiciary has realized substantial savings (more than $50 million) in rent overcharges from the General Services Administration. Judge Gibbons, your testimony indicates that another $10 million savings is expected in fiscal year 2008. Now that you and GSA are working cooperatively in this effort, at what point do you expect this savings to level off (or do you expect to continue to have a savings in the tens of millions)?

The Judiciary believes it is important to continue to work with the courts and GSA to compare the space actually occupied by the courts to the space assignment drawings used by GSA. These drawings are used to establish the basis for rent bills and it is therefore very important that they are accurate. The Judiciary and GSA have recently revised the existing approach to verifying the assignment drawings to the space actually occupied and to adjust the rent bill in connection with errors identified during rent validation so that rent bill adjustments for overcharges can be performed on a more expedited basis. Although we believe that the major rent overcharges have been identified and corrected, savings will continue to be realized if further overcharges are identified during our ongoing and continuous reviews of GSA rent bills.

A second initiative underway for the Judiciary is the review of GSA appraisals used to set rental rates to ensure their accuracy. It is uncertain at this time whether this review will result in significant savings for the Judiciary.

PROJECTS UNDER THE "CARE OF THE BUILDING AND GROUNDS OF THE SUPREME COURT"

Question. The Care of the Building and Grounds fiscal year 2009 appropriation request total $18.4 million, an increase of $6.2 million (51.2 percent) over the fiscal year 2008 appropriation level. Modernization of the Supreme Court construction project began in 2004 and expected completion is the fall of this year, costing a total of $122.3 million.

[CLERK'S NOTE.—The Supreme Court's budget request does not fall under the jurisdiction of the Judicial Conference of the United States and its Budget Committee. Accordingly, this response was prepared by the Supreme Court.]

What was achieved with this expenditure of funds?

Answer. Phase I of the project—the construction of the underground police annex, the Architect of the Capitol (AOC) shop and parking areas—was completed in late 2005. Phase II of the project—the interior building modernization—is ongoing and includes updated life safety systems, windows, mechanical, electrical, and plumbing systems. The work on one of the four building quadrants is complete. The second quadrant is scheduled for completion during the summer of 2008.

The contractor's projected completion date for the entire modernization project is the summer of 2010. Although the building modernization project is more than a year behind, the project continues to be within budget.

Question. Do you expect any further modernization needs in the short-term future?

Answer. The Court does not foresee further modernization requirements outside the current scope of the modernization project. With the project two years away from completion, however, unforeseen circumstances may arise that would require a request for additional funding.

Question. Separate projects include the exterior property renovation/landscaping project and the roof system project. For fiscal year 2009, the Supreme Court is requesting $6.3 million to complete construction to renovate the exterior landscape of

the Supreme Court as well as $2.1 million for phase 2 (of 5 phases) to repair the roof, which is to be completed in 2011. Once the modernization, property renovation/landscaping, and roof projects are completed, will Care of the Buildings and Grounds of the Supreme Court go back down to a maintenance request level or are further projects anticipated in the near future?

Answer. When the modernization project is completed, approximately $3 million will be needed to complete the installation of the perimeter security plan around the Court building and grounds. Additional funding will also be needed to complete the planned roof repairs. Although some funding has been already provided to restore the stone sculptures of the East and West pediments and roof perimeters of the building, it is likely that more funding will be needed to repair and restore the stonework in the building's four interior courtyards. At this time, no other major projects are anticipated, and future funding requests should be more in keeping with normal maintenance-level requirements for the care of the building and grounds.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

Question. The U.S. Sentencing Commission, an independent agency within the Judiciary, promulgates the sentencing guidelines that federal trial court judges consult when sentencing defendants convicted of federal crimes. Last year, the Sentencing Commission amended federal guidelines reducing offenses under federal sentencing guidelines for crack cocaine offenses. Furthermore, the Commission unanimously decided to make the policy change retroactive and this retroactivity became effective on March 3, 2008.

Will crime victims be notified of an inmate's release and will they have an opportunity to provide comment to the court prior to an inmate's release?

Answer. Judges have been asked by the Bureau of Prisons (BOP) to delay for 10 days the effective date of any sentence reduction that results in an inmate's immediate release. This delay is needed, in part, to give the BOP adequate time to notify victims and witnesses of the offender's release, as they are required to do per 18 U.S.C. § 3771. The Judiciary is unaware if the Department of Justice will attempt to contact victims to seek comment prior to an inmate's release. It should also be noted that because of the nature of these offenses, most cases will not have an identifiable victim within the meaning of the Crime Victim Rights Act.

Question. What measures are U.S. probation offices taking to address community safety issues and to ensure a smooth transition for inmates released into the community?

Answer. Probation officers will play a key role in recalculating the inmate's amended guideline range and identifying any post-sentence conduct that may impact the judge's decision. Officers will do that in part by reviewing the inmates disciplinary records and progress reports that are prepared by the BOP. Officers were recently provided with refresher training for the BOP's Sentry system, which allows officers to access information on an inmate's performance while in the BOP. If the officer identifies a risk that cannot be addressed by the conditions originally imposed, the probation officer may ask the court to modify or impose additional conditions of supervised release. These may include conditions for halfway house placement, drug or mental health treatment, or home confinement.

Prerelease planning ordinarily begins several months before an inmate's release, and addresses issues such as an inmate's release residence, continuity of any treatment, and potential employment. It is possible that some offenders will receive a sentence of time served and not have a pre-release plan in place. In such cases, the probation officer and BOP staff will use the 10-day period requested by the government to develop a plan for the inmate's release. The probation officer and BOP staff will prioritize the inmate's needs and attempt to address as many as possible before the inmate's release. Most pressing will be to identify an appropriate release residence. Once released, the officer will conduct a thorough assessment and make any necessary referrals to assist the offender in his or her reentry back to the community.

Question. Please discuss your post-conviction supervision program. How do you determine the services and support supervisees require and receive, including education, job training, and treatment?

Answer. In most cases, an offender's needs have been identified well before supervision begins, either at the pretrial or presentence stage of the Federal criminal justice system. The presentence report and the resulting sentencing document identify treatment, educational, employment, and other needs that will most likely have associated special conditions of the supervision term.

Following an offender's placement on probation or release from an institution, the probation officer works with the offender to assess the offender's risks, needs and strengths to prepare an individualized comprehensive supervision plan. Not all offenders require the same level of supervision to reach this goal. It is the officer's job to distinguish among them and to implement supervision strategies that are appropriately matched with the offender's risks, needs and strengths.

If substance abuse or mental health treatment conditions are ordered, the officer will either conduct an informed assessment or direct the person to undergo a clinical assessment performed by a professional treatment provider. If treatment is necessary, the officer refers the offender to a treatment program tailored to his needs. Treatment is part of the overall supervision objectives and strategies for the case. The officer monitors the offender's progress in treatment and collaborates with the treatment provider to further the offender's chances for success on supervision.

If education is identified as a need for an offender who never completed high school, the officer may identify obtainment of a GED as a supervision objective. If so, the officer assists the offender in enrolling in a local educational program. The officer continually monitors the offender's progress in this type of program, as well as in many others, intended to enhance the offender's success on supervision and beyond.

With respect to an unemployed or underemployed offender, federal probation officers are now working in partnership with the Bureau of Prisons, the Department of Labor and the National Institute of Corrections to create a systems approach to offender reentry and workforce development. Points of contact in each state have been identified to bring implementation of these partnerships to the local level. Probation and pretrial services officers have been trained as "offender workforce development specialists" in 36 states. Federal probation continues to expand the initiative by training more probation officers each year as offender employment specialists. Those trained then develop workforce development partnerships within their states and communities. Career fairs sponsored by Federal Probation for ex-offenders have been held in communities in each region of the country, and partnerships have been developed with colleges, one-stop centers, and community and faith-based organizations to provide resources and training for ex-offenders that provide career opportunities in occupations identified by the President's High Growth Jobs Initiative. This collaborative effort has reduced violations, revocations, and recidivism rates with respect to those who have participated in the employment initiative. Nearly 93 percent of those who start federal supervision employed are still employed at the time their cases close, a strong indicator that they have adapted to the community and are more likely to be successful after completing supervision.

If, during the period of supervision, an officer identifies educational, vocational or treatment needs for which there is no court-ordered special condition requiring the offender participation in the program(s), the officer will petition the court to modify the release conditions accordingly. A court-ordered special condition allows the officer to leverage sanctions if the offender does not comply with the condition. In many cases, the backing of the court will induce the offender to achieve the necessary skills and/or treatment necessary to succeed on supervision and beyond. All of the above interventions, in addition to individualized professional care and concern, contribute toward the goal of increasing the likelihood of success on supervision.

Question. Do you have any data on education levels of people under supervision and do you ensure that supervisees have opportunities to earn a GED if needed?

Answer. If education is identified as a need for an offender who never completed high school, the officer may identify obtainment of a GED as a supervision objective. If so, the officer assists the offender in enrolling in a local educational program. The officer continually monitors the offender's progress in this type of program, as well as in many others, intended to enhance the offender's success on supervision and beyond.

Data on education levels of people under supervision:

PERSONS RECEIVED FOR POST-CONVICTION SUPERVISION FOR THE 12 MONTH PERIOD ENDING 09/30/2007

Education Level	Number	Percent
No Formal Education	476	1
Some Elementary	1	.....
Elementary through 8th Grade	3,112	7
Some High School	12,581	27
Graduate Equivalency	7,123	15
Some Vocational School	9	.....

PERSONS RECEIVED FOR POST-CONVICTION SUPERVISION FOR THE 12 MONTH PERIOD ENDING 09/30/2007—Continued

Education Level	Number	Percent
Vocational School Graduate	441	1
High School Diploma	10,312	22
Some College	8,905	19
College Graduate	2,920	6
Post Graduate	643	1
Total	46,523	100

Modified Table E–1. Excludes pre-existing cases transferred between districts and cases where the education level was unavailable or not applicable.

JUDICIARY WORKLOAD

Question. The new bankruptcy legislation took effect in October 2005 and it appears that filings are still down from pre-Bankruptcy Act levels. From your testimony, it appears that you expect a significant increase in the number of bankruptcy filings—a 23 percent increase.

What trend do you expect in the future?

Answer. Following the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) in October 2005, filings plummeted, falling roughly 50 percent from 1,484,570 filings in 2006 to 751,056 filings during 2007. The Judiciary's latest projections indicate that the number of petitions filed is expected to rise rapidly over the next two years, growing 23 percent in 2008 and another 13 percent in 2009. While, historically, there have been a handful of years where double-digit percentage increases have occurred, these 2008 and 2009 projections are still well below what would have been projected had BAPCPA not been enacted. The number of more work-intensive chapter 13 petitions is expected to reach pre-BAPCPA levels much sooner than the number of chapter 7 petitions.

Question. Will the current downturn in the economy likely further increase filings?

Answer. The Judiciary's bankruptcy filing projections assume that economic growth will be slow—but positive—and that consumer debt will remain high. If the economy worsens, filings would increase more rapidly in the near term. No consensus opinion exists regarding the degree to which a recession would affect overall filings.

Along with a slowing economy, a number of other factors indicate that filings could continue to grow at a fast pace, namely (1) the debt service burden is at or near record levels, (2) mortgage foreclosure rates have been rising, and (3) adjustable rate mortgage resets have made some monthly mortgage payments prohibitively expensive.

Passage and enactment of bankruptcy reform legislation currently under consideration in Congress, which would strike the current exemption of a mortgage on a debtor's principal residence, would likely result in a surge in chapter 13 filings.

Question. In your written testimony, you discussed the impact of the bankruptcy law passed by Congress in 2005. You wrote: "Our bankruptcy courts have indicated that the actual per-case work required of the bankruptcy courts has increased significantly under the new law." You also discussed the increased workload for debtors filing for bankruptcy under Chapter 7. Do you also agree that in the aftermath of the 2005 bankruptcy law there has also been an increased workload for bankruptcy trustees?

Answer. Yes, the workload for bankruptcy trustees has increased in the aftermath of the 2005 bankruptcy reform legislation. For example, a Chapter 7 case trustee must now review results of the debtor's means test, review extensive documentation provided by the debtor (pay stubs, mortgage documents, etc.), and provide the court a statement if the debtor's case is presumed to be abusive. The trustee must prosecute a motion to dismiss a case if substantial abuse of a Chapter 7 filing is discovered. There are also audit responsibilities for the case trustee to ensure that the debtor's schedules of income and expenses are accurate.

QUESTIONS SUBMITTED BY SENATOR SAM BROWNBACK

Question. Your fiscal year 2009 budget submission does not request resources for additional staff in clerks and probation offices. Do you feel that you currently have the appropriate number of staff to address your workload?

Answer. Although the courts do not currently have the appropriate number of staff on board to address workload needs, the funding made available by Congress in fiscal year 2007 and fiscal year 2008 will allow the courts to narrow the gap between current staffing levels and workload. This funding will be utilized over a three year period—fiscal years 2007–2009—to increase staffing levels in the courts. In addition to the staff hired in fiscal year 2007, the Judiciary anticipates the courts will bring on another 305 FTE during fiscal years 2008 (150 FTE) and 2009 (155 FTE).

In fiscal year 2007, Congress provided the courts with $20.4 million to address the most critical workload needs. Because full-year funding was not made available to the courts until six months into the fiscal year, most of these new staff will be brought on board in fiscal year 2008. Hence, the $20.4 million was planned to be utilized during fiscal years 2007 and 2008. The fiscal year 2008 financial plan includes $15 million of the $20.4 million to hire 150 FTE to meet critical workload demands.

In fiscal year 2008, Congress provided the Judiciary with $25 million in emergency appropriations to address workload stemming from increased immigration enforcement. Of this amount, $14.5 million will be used to hire 155 FTE in clerks and probation offices, and the remaining $10.5 million provided for Defender Services will be used to pay private panel attorneys handling immigration cases. With the $14.5 million, the Judiciary estimates that the courts will bring on the 155 FTE over two years: 35 FTE in fiscal year 2008 and 120 FTE in fiscal year 2009.

Question. Please describe your current workload along the Southwest Border. Has the Judiciary been impacted by the additional law enforcement resources added to the border?

Answer.

Impact on the Federal Courts

The federal courts along the Southwest Border (SWB) have been impacted by additional law enforcement resources provided to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) for border and immigration enforcement initiatives.

Criminal filings along the SWB increased 11 percent between 2002 and 2007, and filings in those five district courts currently account for nearly one-third of all criminal cases nationwide. The time sensitive nature of criminal cases, created by statutory issues involving speedy trials requirements, multiple hearings for defendants (e.g. initial appearances, arraignments, and pleas in the early stages), and the need for interpreter services, increase the courts' need for adequate staffing resources.

The SWB courts have the five highest number of felony defendants per judgeship and felony defendants along those five district courts currently account for nearly one-third of all felony defendants nationwide. In addition, the districts of Texas-Southern, New Mexico, and Texas-Western have experienced compounded growth rates in criminal caseload of 9.2 percent, 4.6 percent, and 9.1 percent, respectively, in the number of felony defendants from 2004 to 2007.

Pretrial caseload along the SWB has increased as well. From 2002 to 2007, the five SWB districts experienced a 28 percent increase in pretrial services cases activated compared to 8 percent growth nationally over the same period. By June 2007, the SWB districts accounted for 35 percent of all pretrial cases activated in the federal system.

In the probation program, SWB districts experienced a 10 percent increase in the number of supervision cases from 2002 to 2007. Nationally, the growth in post-conviction cases for that period was 7 percent. The five SWB district have consistently made up 13–14 percent of the total number of cases under post-conviction supervision in the federal system between 2002 and 2007.

While criminal case filings in the federal courts in the five judicial districts along the Southwest border is high by historical standards, filings have not increased commensurate with the increased resources provided to DHS for border enforcement. Despite zero tolerance border initiatives such as Operation Streamline in which nearly everyone apprehended for violating U.S. immigration laws is prosecuted, resource constraints in the justice system have precluded more cases from being prosecuted in the federal courts. Staffing shortages in U.S. Attorney offices, lack of detention beds needed to secure offenders awaiting prosecution, and staffing constraints in U.S. Marshals offices have resulted in the establishment of certain threshold levels in some border districts that must be met before a case is prosecuted. For example, a U.S. Attorney in one district may prosecute someone coming into the country illegally after the tenth attempt, while a U.S. Attorney in another district may prosecute after the fifth attempt.

More Resources Being Provided to the Border

The President's fiscal year 2009 budget includes $12 billion for DHS for border security and enforcement efforts, a 19 percent increase over fiscal year 2008, and a more than 150 percent increase since 2001. DHS has used the funding to increase the number of border patrol agents significantly, particularly on the Southwest border with Mexico. Since 2001, more than 5,000 additional border patrol agents have been hired with most of them placed along the Southwest border. In fiscal year 2008, DHS received funding to hire an additional 3,000 border patrol agents, and the President's fiscal year 2009 budget includes funding for another 2,200 agents, bringing the total to 20,000 agents. When fully staffed the Border Patrol will have more than doubled in size since 2001.

In fiscal year 2008 DOJ received $7 million in emergency funding to hire more assistant U.S. Attorneys (AUSAs) in the five judicial districts along the Southwest border. The U.S. Marshals Service received $15 million in emergency funding to address Southwest border workload needs including the hiring of 100 additional deputy U.S. Marshals. The President's fiscal year 2009 budget includes $100 million for a new Southwest Border Enforcement Initiative focusing law enforcement and prosecutorial efforts on fighting violent crime, gun smuggling, and drug trafficking in that region. If funded, this initiative will increase the number of AUSAs along the Southwest border by another 50 positions. The President's budget also seeks $88 million to expand detention capacity along the southwest border.

The resultant increase in criminal filings from this infusion of resources will impact district judges, clerks offices, probation and pretrial services offices, and federal defender offices on the border. The Judiciary's fiscal year 2009 budget submission, however, does not request funding for new clerks or probation or pretrial services staff on the border or elsewhere. Congress provided the Judiciary with $45.4 million over the last two years—$20.4 million in fiscal year 2007 and $25 million in fiscal year 2008—to address immigration-related workload so, from a staffing perspective, the courts are well positioned in the short term to respond to the increased workload that is expected to materialize.

Question. What additional actions is the Judiciary taking to reduce rent?

Answer. The fiscal year 2009 Judiciary budget request reflects lower requirements as a result of measures incorporated since the cost-containment strategy was initiated in fiscal year 2004. Specific examples of planned or ongoing initiatives that are helping the Judiciary manage costs, or will help in the future include: establishing an annual budget cap for GSA space rental costs for fiscal years 2009 through 2016, which limits annual growth by an average of 4.9 percent per year; revising the U.S. Courts Design Guide to lower future rental costs of space for chambers, attorneys, and court staff; validating GSA rent bills for each court facility and examining the GSA appraisal methodology to ensure rent charged is comparable to commercial rates; establishing "asset management planning" as the Judiciary's new long-range facilities planning methodology that will identify the most cost-effective strategy for meeting the court's operational needs, while controlling and containing costs, especially rent to GSA; and negotiating a return on investment pricing structure with GSA for all new space acquisitions, which replaces a market pricing approach.

Question. In particular, a GAO report identified several opportunities for the Judiciary to reduce its space usage and therefore its rent costs. What has the Judiciary done in response to that report?

Answer. Recommendation 1: Work with GSA to track rent and square footage trend data on an annual basis for the following factors: (1) rent component (shell rent, operations, tenant improvements, and other costs) and security (paid to the Department of Homeland Security); (2) judicial function (district, appeals, and bankruptcy); (3) rentable square footage; and (4) geographic location (circuit and district levels). This data will allow the Judiciary to create a better national understanding of the effect that local space management decisions have on rent and to identify any mistakes in GSA data.

Actions of the Judiciary:

—The Judiciary is continuing its efforts to obtain from GSA more specific information with regard to its rent bills that will aid the Judiciary in assigning costs to its various components. This effort has been quite time consuming as it requires GSA to remeasure its space and reclassify the information in GSA's database according to its type, e.g., district court courtrooms and chambers, clerk's office space, libraries, etc.

—The Judiciary is also continuing its national rent validation initiative to identify mistakes in GSA data. The program has been successful on a number of fronts. The Judiciary has received rent credits and long-term savings (cumulative savings over a 3-year period of over $50 million) and has benefited from GSA's improved internal management controls on its rent-setting practices. We antici-

pate receiving additional rent adjustments and credits resulting from over $10 million in rent errors that we recently reported to GSA. Additionally, the Judiciary (and GSA) now has in place a program to help ensure that accurate rent bills are sustained over the long term.

—As a follow-on to the base-line review of current rent bills, the Judiciary has embarked on a program to: (1) ensure future rent rates are appropriate; (2) maintain a website that will allow court personnel to determine quickly and easily the amount and cost of the space they occupy in federally owned facilities; and (3) design a training curriculum to provide court personnel with a comprehensive understanding of the rules, regulations, and procedures that govern the assignment, classification, and rental-rate determination for the space they occupy in federally owned facilities.

—On February 19, 2008, the Director of the Administrative Office and the Commissioner of GSA's Public Buildings Service signed a Memorandum of Agreement (MOA) that changes the way rent will be calculated for all federally owned courthouses to be delivered in the future. The MOA outlines a new process for determining rental rates based on a return on investment methodology. Under the MOA, the rent will be fixed for the first 20 years of occupancy and will be set to return to GSA approximately 7 percent per year of its capital costs; operating costs will be adjusted annually to reflect GSA's actual operating expenses. Both the Judiciary and GSA will benefit from knowing with certainty how much rent the Judiciary has to pay and how much rent GSA will receive.

Recommendation 2: Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that charges rent to the circuits and/or districts to encourage more efficient space usage.

Actions of the Judiciary:

—In September of 2007, the Judicial Conference approved creation of the Circuit Rent Budget (CRB) program as part of the Judiciary's overall cost containment efforts. CRB is designed to promote greater fiscal discipline in the management of the Judiciary's use of space by aligning, at the circuit judicial council level, the budget responsibility for rent, with the authority to determine space need.

—The chief purpose of CRB is to enable the Judiciary to hold space cost growth to no more than 4.9 percent, on average, over the next eight years. The 4.9 percent cap on rent growth was approved by the Judicial Conference in September of 2006.

—In essence, CRB allocates rent funds to circuits to cover both existing space assignments as well as space growth, with space growth carefully limited through centralized approval of large projects, and by a formulaic distribution to individual circuits of authority to add to the rental base.

—Since its approval by the Judicial Conference in September 2007, the CRB program has been one of the Judiciary's main priorities in the space area. This initiative constitutes a dramatic change in the Judiciary's management of space and rent costs and its implementation affects virtually every work process and system currently in place.

—Now in its pilot year, CRB is transforming the way the Judiciary plans for and approves new space acquisitions. Numerous initiatives are in progress to make the CRB program fully functional and successful. Some of the initiatives include, but are not limited to: a major communications and training plan; and implementation and testing of updated procedures, forms, and processes. The automated system, the Judiciary's Facilities Asset and Construction System (JFACTS), is also being redesigned to support the re-engineering of the Judiciary's space and rent program.

Recommendation 3: Revise the Design Guide to: (1) establish criteria for the number of appeals courtrooms and chambers; (2) establish criteria for space allocated for senior district judges; and (3) make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter spaces, staff efficiency due to technology) and decrease requirements where appropriate.

Actions of the Judiciary:

—Over the last two years, the Judicial Conference of the United States approved multiple reductions to the space standards set forth in the U.S. Courts Design Guide that have reduced staff office sizes and chambers space for senior, district, appellate, bankruptcy and magistrate judges. In addition, the Committee on Space and Facilities plans to consider the criteria for the number of appeals courtrooms. Finally, the Judicial Conference approved technical amendments including reductions in atrium, lighting, and HVAC systems that will result in cost savings.

—As to the impact of electronic filing on court space, the Judiciary has reduced Design Guide requirements for some of the clerk's office space, including intake areas and records storage, because of the impact of the electronic case filing/case management system and has reduced the library space by 13 percent as a result of reductions in lawbook collections.

Question. More specifically, what is the Judiciary's stance on courtroom sharing?

Answer. The current Judicial Conference policy on courtroom sharing is that every active district judge, magistrate judge, and bankruptcy judge should have a courtroom. In response to an authorizing resolution passed by the House Committee on Transportation and Infrastructure, the Judiciary has instituted a policy of one courtroom for every two senior judges in all pending courthouse projects. All of the Judiciary's courtroom sharing policies for all types of judges are currently being studied by the Judicial Conference.

SUBCOMMITTEE RECESS

Senator DURBIN. The subcommittee will now stand in recess.

[Whereupon, at 4:33 p.m., Wednesday, March 12, the subcommittee was recessed, to reconvene subject to the call of the Chair.]